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THE GILD MERCHANT

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THE

GILD MERCHANT

A CONTRIBUTION TO

British Municipal History

BY

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VOLUME I

Oxford

AT THE CLARENDON PRESS

1890

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338.632
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Oxford

PRINTED AT THE CLARENDON PRESS

BY HORACE HART, PRINTER TO THE UNIVERSITY

PREFACE.

THIS book arose to some extent from the author's German doctoral dissertation, entitled 'Gilda Mercatoria' (Göttingen, 1883). The latter was based mainly on printed sources, and did not aim at exhausting the subject. The present work is based mainly on manuscript materials, and in it the author aspires to throw light on the development not merely of gilds but also of the municipal constitution. Much fresh and classified material illustrating general municipal history will be found in the text and footnotes.

The shortcomings of many of the ordinary authorities on the history of gilds and boroughs are touched on in Vol. I. p. 1, and in Appendix A. Appendix B (Anglo-Saxon Gilds) could not be dispensed with, inasmuch as many writers confuse Anglo-Saxon gilds with the Gild Merchant. The Scotch Gild Merchant and the Continental Gild Merchant (App. D and F) require separate treatment, because their development was different from that of the corresponding English institution, although most writers fail to notice this distinction. Appendix C (The English Hanse) and Appendix E (Affiliation of Boroughs) will, it is hoped, be as welcome to Continental as to English historians. The list of authorities at the end of Vol. I. may be helpful to future investigators. I have almost ready for the press a comprehensive bibliography of British municipal history, comprising about 4000 titles, with a critical survey of the whole literature. Whether it will ever be printed, must probably depend upon the success of the present work. The student of municipal

history now labours under great disadvantages; months of arduous labour are necessary before one can obtain a comprehensive knowledge of the local authorities. A good guide to the literature of the subject would tend to stimulate research in a much-neglected field of study.

Vol. II. is made up mainly of documents never before printed, some of them of considerable value for the study of general municipal history (for example, pp. 115–123). They are taken from the collections of manuscripts in the British Museum, the Public Record Office, the Inner Temple Library, the Library of the Society of Antiquaries of London, the Bodleian Library, and the municipal archives of the City of London, Andover, Bristol, Chichester, Exeter, Guildford, Ipswich, King's Lynn, Leicester, Southampton, and Totnes. The author has made no attempt to exhaust the materials contained in these local archives. Those of Leicester, King's Lynn, Andover, and Totnes are particularly rich in Gild Rolls. It is not necessary to explain in detail the difficulties attending the use of manuscripts scattered about in so many different repositories. Stress of circumstances obliged the author to limit his researches in some of these archives to a very few days.

In reproducing documents I have adhered closely to the orthography of the originals; I have corrected these (in footnotes or by insertions in brackets) only in cases where it is necessary to prevent obscurity; obvious mistakes are generally left uncorrected.

The charters of confirmation referred to under the separate towns in Vol. II. are only such as I have happened to meet with; in most cases there were probably more such confirmations of the Gild Merchant. Vol. I. furnishes much material relating to particular boroughs not contained in Vol. II. Hence the reader who is particularly interested in the history of a single borough, should make use of the Index.

My thanks are due to the custodians of the various archives mentioned above. The town clerks in charge of the local records were, with a single exception, exceedingly courteous. My thanks are especially due to Rev. R. H. Clutterbuck of Andover and Dr. R. R. Sharpe, Records Clerk of the City of London. Mr. F. T. Barrett of the Mitchell Library, Glasgow, and Mr. George Stronach of the Advocates' Library, Edinburgh, facilitated my work while I was in Scotland searching for books relating to burghal history. Mr. Stronach has frequently furnished me with extracts from works inaccessible in the British Museum. My friend, Mr. F. York Powell, has helped me with suggestions; and his encouragement has stimulated me to greater effort throughout the progress of this work.

The author has attempted to furnish certain new *facts* relating to the history of municipalities. The great need in this branch of study at present is the production of facts or fundamental data. Such data are scattered in profusion throughout the heaps of dusty records in the local archives. Investigators ought to make more use of these rich veins of precious ore.

Cambridge, Mass.,
Jan. 1, 1890.

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ADDITIONS AND CORRECTIONS.

P. 2, n. 2, l. 4, add 'Pigeonneau, Commerce, i. 122, 123; Kitchin, St. Giles' Fair, 8.'

P. 3, n. 2, l. 13, add 'Heinsch, Reiche der Angelsachsen, 58.'

P. 5. For the development of commerce under Henry II, see Norgate, Angevin Kings, i. 434.

P. 6, n. 1. Romney is another example of a town without 'firma burgi.' (Burrows, Cinque Ports, 211.)

P. 9, l. 5 from bottom. For Edward I's grant of a Gild Merchant and hanse to Berwick in 1302, see Cal. Doc. Scotl., ii. 334; Munic. Corp. Com., 1835, p. 1435; Scott, Berwick, 246.

P. 12, n. 1, l. 1. To understand the reference to Dublin, see vol. ii. p. 41.

P. 16, l. 1, insert 'vol. i.' before '41.'

P. 27, n. 2. At a meeting of the Gild of Berwick in 1506, the officers present were the mayor, dean, alderman, and the twelve 'feryngmen.' (Scott, Berwick, 259.)

P. 30, n. 3. For the continental villeins, see also Gengler, Stadtrechtsalt., 407–431. The following law regarding Scotch villeins is enunciated in the 'Leges Burgorum':—'Si homo alicuius baronis vel militis vel cuiuscunque servus venerit in burgo et emerit ibi burgagium et manserit in burgagio super unum annum et diem unum sine calumpnia domini sui vel eius ballivi, semper erit liber sicut burgensis et libertate burgi gaudebit.' (Innes, Anc. Laws, 9.) See also Hasse, Schles. Stadtrecht, 80; Hoveden, Chronica, ii. pp. xxxviii–xl.; Gilbert, Cal. of Dublin Records, 224; Bracton's Notebook, i. 201.

P. 31, n. 3, for 'twenty-three' read 'thirty-three.'

P. 31, n. 4, l. 3, for 'coustumarii' read 'custumarii.'

P. 36, n. 1, l. 6 from the end, 'upon their oathe' means in conformity to their burgess oath, in which they swore to obey the officers of the town.

P. 45, n. 1, l. 7, before '382' insert 'iii.'

P. 56, n. 6 (pp. 55–56). See also Statutes of the Realm, i. 221. Here is a good example of the continental use of 'lot' in 1206: 'quod sint liberi per totam terram nostram ab exactione theolonii et quodam jure quod loth noncupatur.' (Wauters, Preuves, 64.)

P. 57, n. 5, end, add 'Creighton, Carlisle, 40.'

P. 69. At Winchester there were some citizens who were not in the Gild, as may be inferred from the following words of a charter of Edward III granted in 1349 to the Bishop of Winchester :—'Et quod nullus Civis Civitatis illius nec alius qui in Gilda Mercatoria ejusdem Civitatis non fuerit, feriam illam [St. Giles Fair] cum mercandisis seu mercimoniis suis post diem Nativitatis beate Marie absque fine cum eodem Episcopo pro voluntate ipsorum Justiciariorum faciendo ingredi debet.' (Kitchin, St. Giles Fair, 38.) 'Alius' also indicates that there were other persons besides citizens in the Gild.

P. 70, l. 11. For the Jew's position in the borough community see Statutes of the Realm, i. 221 : 'And the King willeth that they shall not, by reason of their merchandise, be put to lot or scot or in taxes with the men of the cities or boroughs where they abide; for that they are taxable to the King as his bondsmen, and to none other but the King' (Edward I's Statutes of the Jewry). In 1268 the mayor and citizens of Winchester received 'Benedict the Jew, the son of Abraham, into the full membership of our liberty as a co-citizen and our co-gildsman of the Merchant Gild, and to all the privileges which belong to the said liberty.' (Jewish Chronicle, Aug. 9, 1889.) The admission of Jews to the Gild was certainly a rare occurrence; it is possible that, in the case before us, Benedict was a converted Jew.

P. 71, n. 3, l. 6, for 'Oblatibus' read 'Oblatis.'

P. 73, n. 4. For the population of medieval boroughs, see also Burrows, Cinque Ports, 154, 235; Rep. MSS. Com., 1888, App. vii., 171; Archaeologia Camb., 1873, iv. 168.

P. 79, n. 1, l. 4, add 'Schmid, Gesetze, 561'; n. 1, l. 3 from end, for 'Cal.' read 'Abbrev.'

P. 81, n. 1, end. The term 'gild-hall' was also a modern innovation in the Cinque Ports. (Burrows, Cinque Ports, 43, 44.)

P. 81, n. 2. There was a moot-hall also at Maldon and Daventry. (Munic. Corp. Com., 1835, pp. 1844-5, 2431.)

P. 82, n. 2. In 22 Edw. I the 'aula communis' of Oxford is mentioned. (Madox, Firma Burgi, 94.)

P. 82, n. 3, l. 3 from bottom, after moot-hall insert 'or moot-place.'

PP. 82, 83. I wish to add a few more words of explanation concerning the use of gild-hall for town-hall. The borough court was originally held in the open air, the moot-place being generally near the old or chief church of the town, or near the market-place; for example, at Oxford the court was held near St. Martin's (Carfax) Church, in London in the church-yard of St. Paul's. (Gomme, Prim. Folk-Moots, 151–159; Liber de antiq. Leg., 37, *et pass.*; Liber Cust., 726; Boase, Oxford, 8; vol. ii. pp. 116–120.) The gilds, on the other hand, had their meetings and banquets under cover, i. e. in their

gild-hails. (Below, p. 183, n. 1.) In bad weather the civic authorities held pleas in some gild-hall or church. (Statuta Gilde, cc. 43, 49, below, pp. 237–9; vol. ii. p. 121.) In course of time a separate building would be erected, called the moot-hall or common hall, etc.; or some old gild-hall would be purchased to serve as a town-hall, as described on p. 83.

P. 85, n. 1. For some arguments against the theory of the Roman origin of the Anglo-Saxon borough, see Green, Making of England, ch. iv; Scrutton, Influence of Roman Law, 53–57. My views concerning the origin of the borough are, perhaps, not expressed specifically enough on p. 85. I regard the borough merely as an expansion of a township or the union of two or more townships. This larger community obtained a jurisdiction of its own separate from the courts of the hundred and shire. The simple township had no tribunal of its own; its pleas were generally tried in the court of the hundred. Thus the possession of a special court distinguished a borough from a township. For the Anglo-Saxon 'burh-gemot,' see Schmid, Gesetze, 596; and Stubbs, Sel. Charters, 71, 73. The Danish invasions tended to draw the people together into larger communities or fortified places, and hence was an important element in the early growth of boroughs.

P. 95, n. 1. For some examples of the use of 'successores' in the twelfth century, see Munic. Corp. Com., 1835, p. 1289 (Ilchester); and Rep. MSS. Com., 1881, p. 269 (Pontefract). See also vol. ii. p. 150.

P. 106, n. 2. For the 'Five Burghs,' see also Schmid, Gesetze, pp. li, 574; Green, Conquest of Eng., 122, 609; Worsaae, Danes and Norw. in Eng., 31, 32; Lappenberg, England, i. 314, 612; Freeman, Norm. Conq., iv. 208, vi. 91. It is doubtful whether these five boroughs (Derby, Nottingham, Stamfold, Lincoln, Leicester) really formed a municipal federation. For the Cinque Ports, see Burrows, Cinque Ports.

P. 107, n. 3, l. 5, for 'Placita' read 'Placit.' or 'Placitorum.'

P. 108, n. 3. The following throws some light on the relations of the weavers of Oxford to the civic authorities:—'Textores Oxonie reddunt compotum de i. dolio vini pro habendo brevi quod Maior et Prepositi Oxonie permittant ipsos habere libertates in villa Oxonie, tam in pannis faciendis quam aliis, quales habuerunt tempore Henrici Regis, Ricardi Regis et Johannis Regis,' etc. (9 Henry III., Madox, Exch., i. 414.) Cf. ibid., i. 338–339. On the Continent the merchants seem to have oppressed the weavers and fullers because these artisans competed with the former in the cloth trade. See Levasseur, Classes Ouv., i. 266, *et seq.*; Schles. Urk., Introd.; Höhlbaum, Urk., i. 449; below, p. 298. This may help to explain similar oppressions in English towns.

P. 108, n. 4. For Flemish artisans in England during the reign of Henry

I, see also Varenberg, Relations Dip., 70; Chalmers, Caledonia, ii. 600; William of Malmesbury, Gesta Regum (Rolls Series), ii. 365, 477; Hoveden, Chronica, i. 168; Symeon of Durham, Opera (Rolls Series), ii. 245; Florence of Worcester, Chronicon (Engl. Hist. Soc.), ii. 64.

P. 109, n. 2. See also Rot. Scacc., i. p. lxxxii; Robertson, Scotl., i. 309. The whole history of the Flemings in Berwick is very interesting. See Walter de Hemingburgh, Chronicon, ii. 98, A.D. 1296: 'Triginta vero Flandrenses, qui Aulam Rubeam sic nominatam tali condicione receperant ut eam contra regem Anglorum omni tempore tuerentur, domum eandem usque ad vesperum viriliter defenderunt.' Rishanger, Chronica, 157, calls them 'mercatores vero Flandrenses, qui in villa eadem domum, ad modum turris, habebant fortissimam'; Trivet, Annales, 344, uses similar language in speaking of them.

P. 110. An essay by C. W. Colby on the early history of the 'select body' will soon appear in the English Historical Review.

P. 114, n. 3. For the privileges of the weavers of Oxford *temp.* Hen. II, see Madox, Exch., i. 339.

P. 115, n., l. 5 from end, for 'Cal.' read 'Abbrev.'

P. 116, n. 3. See also Jusserand, Wayfaring Life, 238.

P. 118, n. 6. For a note concerning the Corpus Christi Play at Pontefract, see Walford, Gilds, 253. See also vol. ii. p. 127; Gilbert, Cal. of Dublin Records, 239.

P. 124, n. 1. See also vol. ii. p. 80.

P. 126, n. 2. See also vol. ii. p. 384.

P. 127, n. 1, add 'Madox, Exch., i. 337.'

P. 129, n. 1. There was also a Mercers' or Merchant Grocers' Company at Pontefract in 1700. (Walford, Gilds, 253.) There was formerly a company at Richmond made up of the mercers, grocers, and haberdashers. (Smith, Old Yorksh., New Ser., i. 133.)

P. 136, n. 1. For 'town ventures' of Rye, see Burrows, Cinque Ports, 219.

P. 161, l. 1, *et seq.* The gild and borough were different aspects of the same thing, just as were parish and township. See Stubbs, Const. Hist., i. 227.

P. 164, n. 3. The Company of Dredgers of Faversham and that of the Drapers of Nottingham are still in existence. (Burrows, Cinque Ports, 236.)

P. 176, n. 2. Von Maurer, Städteverf., ii. 322, also regards these 'collegia' as hereditary castes, organized for the service of the state. For the whole subject, see Levasseur, Classes Ouv., Bk. i.

P. 176, n. 4. For these 'sworn-brotherhoods,' see also Vigfusson and Powell, Corpus Poet., i. 102, 308, 393, 423, 424, 486; Kennett, Paroch. Antiq., i. 78.

P. 178, l. 7. Cf. 'gafol-gelda,' Ine, c. 6 § 3, c. 23 § 3. (Schmid, Gesetze, 22, 30.)

P. 179, l. 15, for 'friþ' read 'friþ.'

P. 179, n. 3. Another collection of public laws was made in a similar way, i.e. by the people of Kent at the instance of officers sent by King Athelstan ('auxilio sapientum eorum quos ad nos misisti'). See Schmid, Gesetze, 148.

P. 180, l. 2. It is also worthy of remark that injunctions concerning psalm-singing are to be found in the midst of other public laws of Athelstan dealing with theft. 'Et decantetur omni die Veneris in singulis ecclesiis unum quinquagenarium psalmorum pro regi et omni popolo.' (Schmid, Gesetze, 155.)

P. 180, n. 2. See also Earle, Land-Charters, p. l.; and Hermann, Ständegliederung, 34. Hermann does not agree with me in my explanation of 'hynden,' but he substitutes nothing better.

P. 181, l. 1. It should be noticed that in several passages of the 'Judicia' the verb 'gildan' (=to pay) is used. 'Gelda' is also applied to persons in Ine's laws (Schmid, Gesetze, 22, 30. 'Gafol-gelda'). 'Gegilda' in the 'Judicia' seems to me to be used in a similar way, not meaning brethren of a fraternity, but persons bound to make certain payments.

P. 183, n. 3. See also below, pp. 290–291.

P. 185, last line. In 1383 four men of Kilkenny were to be elected 'barons' to hold pleas of fairs. (Chartae Hib., 81.) The same enactment occurs in a charter of New Ross in 1389. (Ibid., 85.) In 1584 Kilmallock received a charter which ordered that the chief town officer and twelve burgesses were to choose 'four men to be barons in the court of pie poudre who should have power to hold pleas.' (Cal. of Close and Pat. Rolls, ii. 87.)

P. 188, l. 3 from bottom, for 'cnichta' read 'cniahta.'

P. 189, n. 8. These laws of Henry I also repeat Alfred's enactments (cc. 27, 28) concerning 'gegildan.' (Schmid, Gesetze, 475; c. 75, § 10.) In Henry I's reign the Abbot of Ramsey granted certain privileges to a gild at Ferefeld. (Chronicon Abb. Rames., 237.) See also Josc. de Brakelonda, 2.

P. 190, n. 4. For federations of monasteries in England, see also Annales Monast., iv. 411; Hale, Reg. Prior. Wigorn., pp. xciv, cxxvi.

P. 199, n. 3. In 1475 Bruges was regarded as an exemplar by certain crafts of Edinburgh. (Extracts from Ed. Records, 1403–1528, p. 32.)—For the Flemings in Scotland, see also Chalmers, Caledonia, ii. 600–610.

P. 199, n. 3, l. 12, dele 'and.'

P. 210, n. 6, end, add 'Salvioni, Gilde, 71.'

P. 225, n., l. 7, for 'Chalmers' read 'Chambers.'

P. 270. For some interesting documents illustrating burghal affiliation and the appellate jurisdiction of mother towns in Flanders, see Coutume de Bruges, 260, 422, 486–494.

P. 284. In 1279 Peter King of Aragon granted to the merchants of Barcelona the right to elect two merchants to supervise mercantile affairs. (Capmany, Memorias Hist. sobre Barcelona, ii. 367.) For the craft fraternities of Barcelona, see Ebert, Quellenforschungen zur Gesch. Spaniens, (Cassel, 1849), 26–42.

P. 287, n. 5. Hasse (Schleswiger Stadtrecht, ch. v) also makes the Gild the starting-point of the civic community, but he advances little evidence to support his hypothesis.

The Gild Merchant

THE GILD MERCHANT.

CHAPTER I.

Inception and Distribution.

THE history of gilds appeals to a wide range of sympathies—to the political economist, investigating the annals of commerce and industry; to the jurist, seeking to penetrate the gloom enveloping the origin of the law of corporations; to the sociologist and historian, interested in the social structure and municipal institutions of the past. This is pre-eminently true of the English Gild Merchant, for a clear account of which we vainly seek in treatises devoted to the history of gilds[1] and municipalities[2], or in works on the general development of the English constitution[3]. The

[1] See Appendix A.

[2] Brady's Treatise of Cities and Boroughs, which, Hallam (Hist., iii. 41) justly says, is 'disgraced by a perverse sophistry and the suppression of truth,' does not discuss the Gild Merchant in detail. Still he ascribes to it an enormous influence in the evolution of the burghal constitution (pp. 20, 47, 77, 84); but advances no proofs to support his assertions. Madox has very little to say concerning this fraternity (Firma Burgi, 27–30), but that little, by judicious elimination of his 'peradventures,' has been made the key-stone of some pregnant theories by such continental writers as Wilda, Fortuyn, Hüllmann, and Brentano. In compiling their laborious History of Boroughs, Merewether and Stephens were actuated more by a desire to reform the present than to add to our knowledge of the past. Many of their general inferences regarding the Gild Merchant (pp. xiv., xvi., 117, 118, 138–146, 350, 366, 381, 390, 392, 410, 469, 488, 1049, 1244, *et passim*) and other medieval municipal institutions are untenable. The chief utility of the work lies in its valuable illustrative materials. Thompson's Essay on English Municipal History is really a collection of excellent disconnected sketches of the history of a few particular towns, rather than a general treatise on boroughs. His data are too meagre to give general authority to his deductions concerning the Gild (pp. viii.–xi., 13–15, 36, 49–58, 80–86, 99–108, 119, 129, 143).

[3] Gneist dismisses the subject with a few words (Verfassungs- und Verwaltungsrecht, ii. 496, 504; Gesch. des

little that has been written on the subject is replete with errors, whose wide prevalence renders it doubly difficult to give a lucid exposition of the nature and growth of this institution.

In the sources for the history of the Anglo-Saxon period there is no trace of the existence of the Gild Merchant, or of any gilds forming the nucleus of town government, or even participating in the latter[1].

The history of the Gild Merchant begins with the Norman Conquest. The latter widened the horizon of the English merchant even more than that of the English annalist. The close union between England and Normandy led to an increase in foreign commerce[2], which in turn must have greatly stimulated internal trade and industry. Moreover, the greatly enhanced power of the English crown tempered feudal turbulence, affording a measure of security to traders in England that was as yet unknown on the continent[3]. 'Among other things,' says the Saxon chronicler, 'is not to be forgotten the good peace that he (William the Conqueror) made in the land. It was such that a man . . . might go over the kingdom unhurt with his bosom full of gold[4].' 'All ports and roads,'

Self-government, 105, 110; Verfassungsgeschichte, 125). In this as in other phases of municipal development, he follows Merewether and Stephens too closely. Stubbs's brief account of the Gild Merchant is vague and incomplete, but it is by far the best that I have seen (Constit. Hist., i. 468, 473–475, 699, iii. 605–632). He touches upon some important truths of whose existence his predecessors had no presentiment, and he avoids many of their errors.

[1] See Appendix B.

[2] Freeman, Norman Conq., v. 359, 360; Höhlbaum, Hans. Urkundenbuch, iii. 379, 380; Cunningham, English Industry, 118, 133; Hallam, Middle Ages, iii. 23. See also Ordericus Vitalis in Duchesne's Norm. Scriptores, 520, under the year 1070: 'Vicos aliquos aut fora urbana Gallicis mercibus et mangonibus referta conspiceres.' For the commercial prosperity of the larger English towns in the first half of the twelfth century, see William of Malmsbury, Gesta Pontificum, 140, 151, 201, 208, 292, 308, 312, and Gesta Regum, 214, 215; Gesta Stephani, 22, 36; Höhlbaum, Hans. Urkundenbuch, iii. 379–381; Orkneyinga Saga, 95, 96; Macpherson, Commerce, i. 329–332; and cf. Ashley, Woollen Ind., 35. The Norman Conquest appears also to have stimulated the commercial growth of French towns (Chéruel, Hist. de Rouen, i. p. lxix).

[3] Nasse, Feldgemeinschaft, 51; Stubbs, Const. Hist., i. 329, 383.

[4] Anglo-Saxon Chronicle, A. D. 1087 (ed. Thorpe), ii. 189. Cf. Henry of Huntingdon, Historia, p. 210; Chéruel, Hist. de Rouen, i. p. lxxii.

William of Poitiers informs us, 'he ordered to be open to merchants, and no injury to be done them[1].' The improved communication with the continent and the augmentation of internal security by a strong central power soon expanded trade and industry far beyond the narrow limits by which they were circumscribed in Anglo-Saxon times[2].

With this expansion of trade the mercantile element would become a more potent factor in town life, and would soon feel the need of joint action to guard its nascent prosperity against

[1] Gesta Willelmi (ed. Maseres), 149: 'Portus et quaelibet itinera negotiatoribus patere, et nullam injuriam fieri jussit.' See also Ordericus Vitalis in Duchesne's Norm. Scriptores, 520: 'Nemo praedari audebat sed unusquisque sua rura tuto colebat.'

[2] It is true that commercial relations existed between England and the continent in the Anglo-Saxon period. (Haddan and Stubbs, Councils, iii. 497; Monumenta Germaniae, iv. 718; Maseres, Hist. Anglic., 157, 210; Cunningham, Engl. Industry, 82, 83; Giry, St. Omer, 276; Worsaae, Danes and Norwegians in Eng., 100–106; Turner, Anglo-Saxons, iii. 115; Raine, Historians of Church of York, i. 349, 350, 454; Lappenberg, England, i. 227, 624–626.) But Green is doubtless right in concluding that this intercourse did not assume large dimensions, that, in fact, 'in the tenth century England could hardly claim to be a trading country at all' (Conq. of England, 335, 436; Macpherson, Commerce, i. 287–289). The law that made any merchant 'thegn-right worthy' who thrice crossed the sea by his own means (Thorpe, Laws, 81; Schmid, Gesetze, 391), indicates that such foreign ventures could not have been very frequent. It is plain, likewise, that internal trade and industry did not flourish. The needs of the powerful lords were satisfied by their dependents; indeed, most communities contented themselves with producing only enough to supply their own wants (Turner, Anglo-Saxons, iii. 105; Cunningham, Eng. Industry, 60, 84). From the frequent mention of theft in the Anglo-Saxon laws, and from the stringency with which it was punished (Thorpe, 47–54, 97, and Index; Schmid, 557), we may infer that it widely prevailed and engendered a feeling of general insecurity. Hence all buying and selling was restricted to privileged towns; and no bargain could be made unless witnessed by the port-reeve, the territorial lord, the priest, or some other trustworthy man (Thorpe, 68, 87, 108, 120, 212; Schmid, 111, 137, 181, 203, 355, 619). In these laws the merchant is very rarely mentioned.—London had far outstripped the other Anglo-Saxon towns in commercial activity (Bede, Eccl. Hist., lib. ii. c. iii.); but it is evident from the 'Judicia Civitatis' (Thorpe, 97; Schmid, 157) that agriculture still predominated in it in the tenth century. In most English boroughs during the greater part of the eleventh century agriculture was a more conspicuous element than trade and industry (Cunningham, Eng. Industry, 123; von Ochenkowski, 51; English Hist. Rev., ii. 367).

The reigns of Canute and Edward the Confessor also contributed to the development of English commerce and industry (Worsaae, Danes in Eng., 100, 106; Green, Conquest, 328, 440; De Fréville, Commerce de Rouen, i. 98, ii. 12; Höhlbaum, Urkundenbuch, iii. 380; Thorpe, Anc. Laws, 211), but not in the same degree as that of William the Conqueror.

encroachments. Not until there was something of importance to protect, not until trade and industry began to predominate over agriculture within the borough [1], would a protective union like the Gild Merchant come into being. Its existence, in short, presupposes a greater mercantile and industrial development than that which prevailed in England in the tenth century. This circumstance and the absence of all mention of the Gild Merchant in the records of the Anglo-Saxon period render it probable that this fraternity first appeared in England soon after the Conqueror had established his sway and restored order in the land.

Whether it was merely a reorganization of older gilds, a spontaneous adaptation of the gild idea to the newly-begotten trade interests, or a new institution directly transplanted from Normandy, we have no means of determining with certainty. The last-mentioned view is strongly favoured by the circumstance that, at the time of the Conquest, the Gild Merchant doubtless existed in Northern France and Flanders [2]. From the Frenchmen who became burgesses of English towns [3], and from the Norman merchants who thronged

[1] Even long after the Conquest the agricultural element prevailed in English boroughs far more than is commonly supposed. See Thompson, Munic. Hist., 43, 45; Rot. Parl., i. 228–238; Rogers, Six Centuries, i. 112, 122; Owen and Blakeway, Shrewsb., i. 153, 154; Gomme in Archaeologia, vol. 46, pp. 403–422; Ormerod, Cheshire, iii. 36; Gilbert, Account of National MSS. of Irel., 309; Stark, Gainsb., 73–75; Picton, Memorials, i. 30, ii. 27; Boldon Buke, 2, 5; Jefferson, Cumberl., ii. 23; Ashley, Econ. Hist., 73.

[2] Pagart d'Hermansart, Les anciennes communautés de St. Omer, 11, 12; Giry, St. Omer, 276; Wauters, Libertés Communales, 29, 30, 278, 281, 768; Cellier, Recherches sur Valenciennes, 285.

[3] During the reign of the Conqueror there were many 'francigenae burgenses' in Hereford, Shrewsbury, Norwich, Nottingham, London, and probably in other towns. See Domesday, i. 179, 252, 280, ii. 118; Engl. Hist. Review, ii. 366; Records of Nottingham, i. 58, 108, 124, 186; Bailey, Nottinghamshire, i. 27, 29; Morgan, Norman Occ., 153. 'Inter Angliae municipia, vicos et civitates, Londonia melior et major habetur. Ad hanc, postquam facta est sub ditione Normannorum, quamplures indigenarum Rotomagi et Cadomi, quae nobiliora Normanniae loca sunt, se transtulerunt, incolae civitatis esse delegentes, eo quod mercimoniis aptior et refertior erat quae (*sic.*) frequentare consueverant.' (Vita S. Thomae, ed. Giles, ii. 73.)—'Civiliter Angli cum Normannis cohabitabant burgis, castris et urbibus.' (Ordericus Vitalis in Duchesne's Norm. Script., 520.)

the marts of England after the Conquest, the English would soon ascertain the advantages of formal trade organization[1].

The earliest distinct references to the Gild Merchant occur in a charter granted by Robert Fitz-Hamon to the burgesses of Burford (1087–1107), and in a document drawn up while Anselm was Archbishop of Canterbury (1093–1109). According to the latter the Chapman Gild of Canterbury gave to the community of Christ Church eight houses in exchange for nine others[2]. Soon afterwards, during the reign of Henry I, the Gild Merchant appears in various municipal charters; and, as the latter multiply under Henry II, Richard I, and John, it is mentioned more frequently among the burghal franchises. Its growth and propagation must have been greatly stimulated by the further extension of England's continental possessions under Henry II, and by the wise laws enacted during his reign for the preservation of internal peace and order.

It is necessary carefully to determine the place of the Gild among the privileges enumerated in the charters of the twelfth and thirteenth centuries. Pre-eminent among these immunities is the grant of a free borough ('liber burgus'), a term difficult to define, because it was a variable generic conception. It comprised a vague aggregate of franchises[3], whose number was

[1] Prof. Höhlbaum (Deutsche Lit.-Zeitung, Jan. 12, 1884) agrees with me in placing the inception of this fraternity after the Norman Conquest. Stubbs says, it 'must be at least as old as the Conquest' (Const. Hist., i. 472–473); 'The great institution of the "gilda mercatoria" runs back, as we have seen, to the Norman Conquest and far beyond it' (Ibid., iii. 607). Green (Conquest, 439, 450) speaks of the Gild Merchant at Nottingham and Lincoln in the first half of the eleventh century, apparently basing his assertions on Domesday Book, which, however, nowhere mentions this institution. Thompson (Essay, 13, 14, 35, 36; Leic., 11; see also vol. ii. p. 252) and Walford (Insur. Cyclop., v. 347) assure us, without advancing any proofs, that it widely prevailed in Anglo-Saxon towns. Thompson (Leic., 11) and Pearson (Middle Ages, i. 44) refer its origin to Roman times. Nitzsch (Berlin Akad., Monatsberichte, 27) thinks that it already existed among the Saxons before they settled in England.

[2] Vol. ii. pp. 29, 37.

[3] That this is the proper definition of 'liber burgus' is evident from many records, especially town charters; see, for example, Madox, Exch., i. 423. 'All Buroughs that are styled Liberi Burgi have Liberties,' says Madox in Addit. MS., Mus. Brit., 4531, ff. 60, 61; and with this agrees the definition given by the burgesses of Macclesfield in 1350 (vol. ii. p. 171).

gradually increased in the thirteenth and fourteenth centuries. A community might lack some of them, possessed by more powerful towns, and yet be called a free borough; while, on the other hand, a simple village might enjoy certain of these liberties, without being able to arrogate to itself the title, independence, and dignity of a borough [1]. Chief among the privileges thus comprehended in the notion of a free borough, and often granted side by side with the latter, were an independent judiciary, the burgesses being free from suits in county and hundred courts outside the town—doubtless the principal characteristic of a borough; the fee-farm rent ('firma burgi') or commutation of tolls court perquisites, and other town dues, belonging to the king or mesne lord, for a fixed sum of money; exemption from toll throughout the realm; the right to hold markets and fairs; the election of town officers by the burgesses; the gild merchant [2]; the return of all writs; and, ultimately, the complete exclusion of the sheriffs and other royal bailiffs from all interference in the affairs of the borough [3]. The following translation of a charter of King

[1] Take, for example, the important privilege of 'firma burgi.' Some powerful towns such as Winchester and Bristol do not appear to have been held by the burgesses in fee-farm till about the reign of Edward III. (Woodward, Hampsh., i. 278, 279; Taylor, Book about Bristol, 250; Hunt, Bristol, 56.) In 11 Edward I, Winchester was still 'de corpore comitatus' (Madox, Firma Burgi, 19). On the other hand, mere villages were frequently vested with this franchise (Madox, Firma Burgi, 54–56; Rot. Chart., 85, 186; Hartshorne, Northampton, 5).

[2] In municipal records it is most commonly called 'gilda mercatoria' and 'gilda mercatorum' (vol. ii. pp. 3–8, 16, 28, 30, 33, 38, 45–47, *et passim*). The following forms of the name also occur: 'gilda mercanda' (below, p. 9, and ii. 172, 174, 202–204, 208, 211); 'gilda mercalis' (ii. 40, 43, 45); 'chapman gild,' 'ceapmannegilde,' 'chepmenesild' (ii. 37, 135, 138, 142); 'gildemercatura,' 'guilda mercimonialis,' 'gilda mercandizandi' (ii. 60, 127, 389); 'gelda mercatoria,' 'gelda mercandisa' (ii. 58); 'gilda mercaria' (ii. 279); 'guilda marcatoria,' 'gylda mercantoria,' 'gylde chaffare,' 'gilde markande' (ii. 136, 212, 255, 256). For various other forms ('ghilda,' 'gulda,' 'yeld,' etc.), see ii. 132, 145, 150, 175, 176, 195, 212, 273, 347, 358.

[3] To these may be added the right to hold lands and tenements by burgage tenure, which is generally mentioned only in the charters of small baronial towns, its existence being taken for granted in other cases. See below, Ch. v. The burgesses of Hereford thus defined their tenure:—'And we do not use to do fealty or any other foreign service to the lord of the fees for our tenements, but only [pay] the rents arising out of the said tenements; because we say that we hold our tene-

John to the town of Ipswich in 1200 furnishes an example of the most common form of grant of the Gild Merchant:—

'John by the grace of God king, etc. Know ye that we have granted, and by our present charter confirmed, to our burgesses of Ipswich our borough of Ipswich with all its appurtenances and all its liberties and free customs, to be held of us and our heirs by them and their heirs hereditarily, paying annually at our Exchequer the right and customary ferm at Michaelmas term, by the hand of the provost of Ipswich, and a hundred shillings of increment at the same term, which (increment) they were accustomed to pay. We have also granted to them that all burgesses of Ipswich may be quit of toll and stallage, lastage, passage, pontage, and all other customs throughout our whole land and in our sea-ports. We have also granted to them that none of them shall plead without the borough of Ipswich in any plea save pleas of foreign tenures, excepting our officers; and that they may have a Gild Merchant and their hanse; and that no one shall be billeted nor take anything by force within the borough of Ipswich; and that they may duly have their lands and their pawns and all their debts, from whomsoever these may be due; and concerning their lands and tenements that are within the borough, justice shall be done them according to the ancient custom of the borough of Ipswich and of our free boroughs; and pleas concerning their debts contracted at Ipswich and concerning pawns there given are to be held at Ipswich; and that none of them be adjudged to pay a fine except according to the law of our free boroughs. We also prohibit any one in our whole land from taking toll and stallage or any other custom from the men of Ipswich, under our penalty of £10. Wherefore we desire and firmly command that the aforesaid burgesses may

ments by the service of burgage, or as burgesses' (Journal of Archaeol. Assoc., xxvii. 471). Burgage tenure implied a fixed rent in lieu of all services and the right to devise one's lands and tenements. See Merewether and Stephens, 701; Bracton, De Legibus, iv. 263, 264; Britton, ii. 12; Year Books, 21, 22 Edw. I, p. 70, and 8 Edw. II, p. 255; Bracton's Note-Book, §§ 11, 73.

duly and peaceably have and hold the aforesaid liberties and free customs, as freely and fully as other burgesses of our free boroughs of England have had or have, saving in all things the liberties and free customs of our citizens of London. Moreover, we desire and grant that the same our burgesses may elect two of the more lawful and discreet men of their town, and present them to our chief justice at our Exchequer, who shall well and faithfully keep the provostship of the aforesaid borough of Ipswich; and that they shall not be removed, as long as they comport themselves well in that bailiwick, except by the common counsel of the aforesaid burgesses. We also desire that in the same borough there may be elected by the common counsel of the said burgesses four of the more lawful and discreet men of the borough to keep the pleas of the crown and other things pertaining to us and our crown in the same borough, and to see that the provosts of that borough justly and lawfully treat the poor as well as the rich. Given by the hand of G. . . Archdeacon of Wells on the 25th of May in the second year of our reign[1].'

In many charters we find a clause similar to the following:—'We grant a Gild Merchant with a hanse and other customs belonging to the Gild, so that [or 'and that'] no one who is not of the Gild may merchandise in the said town, except with the consent of the burgesses[2].' The subjoined also frequently appears:—'We likewise grant them and their heirs that if any person's villein remain in the town, and hold land in it, and be in the said Gild and hanse, and lot and scot, a year and a day without being claimed, then he can not be reclaimed by his lord, but may remain free in the said town[3].' Many important

[1] Vol. ii. p. 115.

[2] Vol. ii. pp. 16, 19, 58, 110, 191, 194, 210, 211, 272, 276, 355, 376, 386. See also Harland, Mamecestre, 198; Rotuli Chart., 211, 212; Placita de quo War., 17, 372, 817; Eyton, Shrop., i. 303, xi. 134; Record of Caern., 158–198; Taylor, Flint., 30; Charters of Ludlow, 11, 12; Sinclair, Wigan, i. 41. Cf. vol. ii. pp. 33, 34, 40, 45, 62, 135, 192, 213, 250, 254. For the hanse, see App. C.

[3] Vol. ii. pp. 16, 194, 356, 376, 386, 389, and App. C; Record of Caernarvon, 158–198. This clause is found most frequently in the municipal charters of Wales. In those of English towns the phrase 'and hold land in it,'

deviations from these ordinary forms of grant are given *in extenso* in Volume ii.

By means of such town charters and other records we are able to determine the extent to which the Gild Merchant prevailed in England during the middle ages. In the following list I give, as far as my materials will permit, the names of all towns in which this institution existed, together with the date of the earliest reference to the same.

ENGLAND.

Alnwick	1611	Vol. ii. p. 1.
Altrincham	1290	Ingham, Altrincham, 70; Ormerod, Chesh., i. 536.
Andover	1175–6	Vol. ii. p. 3[1].
Axbridge	Rich. II	Vol. ii. p. 12.
Bamborough	1332	Record Office, Pat. 5 Rich. II, p. 2, m. 7.
Barnstaple	1303	Vol. ii. p. 12.
Bath	1189	Vol. ii. p. 351.
Bedford	Rich. I	Vol. ii. p. 16[2].
Berwick	Edw. I	Appendix D; vol. ii. p. 18.
Beverley	1119–35	Vol. ii. p. 21.
Bodmin	1225–72	Vol. ii. p. 235; Brady, Treatise, 45; Maclean, Trigg Minor, i. 208[3].

is often replaced by 'and continue in it' ('et etiam in eo se tenuerit'). See below, n. 3, and vol. ii. pp. 191, 211, 273, 374.

[1] The following came to my notice too late to insert in vol. ii.: 'Henricus [II] dei gratia, etc., salutem. Sciatis me concessisse hominibus de Andewra vt habeant gildam mercatorum in Andewra [et] quod sint quieti de Theolonio, passagio [et] consuetudine per totam terram meam, sicut Burgenses Wintonie qui sunt de Gilda mercatorum sunt quieti. Et super hoc nullus eos disturbet iniuste pro consuetudine super x. libras forisfacture. Testibus, etc. Apud Wyntoniam.' The men of Andover received a similar royal charter in 5 Richard I. (Hist. MSS. Com., 1887, App. iii. p. 10.)

[2] The charter of Richard I asserts that Bedford had the Gild in the time of Henry II.

[3] The charter of Earl Richard of Cornwall to the Prior and Convent of Bodmin, which was confirmed by Edward I, contained these, among other, clauses: 'Et [burgenses] habeant Gildam mercandam liberam, sicut habent et habere solent, per redditum quadraginta solidorum et quadraginta denariorum, quos annuatim reddent attornato nostro . . . Et si aliquis in eadem villa ad Gildam mercandam iuste presentatus fuerit, et ibidem per annum et diem sine contradiccione remanserit, per vsum

Boston (?)	1260	Thompson, Boston, 134[1].
Bridgnorth	1227	Cal. Rot. Chart., 31; Eyton, Shrop., i. 303.
Bridgwater	Edw. I.	Vol. ii. p. 23.
Bristol	[1188].	Vol. ii. pp. 24, 354, 359[2].
Burford	1087–1107[3]	Vol. ii. pp. 28–29.
Bury St. Edmund's	1198	Vol. ii. p. 30[4].
Calne	1565	Vol. ii. p. 36.
Cambridge	1201	Vol. ii. p. 357[5].
Canterbury	1093–1109	Vol. ii. p. 37.
Carlisle	Henry II	Vol. ii. p. 38.
Chester	1190–1201	Vol. ii. p. 40.
Chesterfield	1294	Vol. ii. p. 46.
Chichester	Stephen	Vol. ii. p. 47[6].

predicte ville, si aliquis eum calumpniauerit, in eiusdem ville libertate remaneat.' (Record Office, Charter Roll, 13 Edw. I, m. 3.)

[1] Thompson says: 'The Guild of the Blessed Mary . . . was, undoubtedly, the *Gilda Mercatoria* of Boston, although much of its constitution was of an ecclesiastical nature.' But he presents no evidence showing that it was a Gild Merchant.

[2] The charter refers back to the time of Robert and William, Earls of Gloucester (1109–1173). According to Munic. Corp. Com. 1835, p. 1152, the date of John's grant is *circa* 1188.

[3] The grant of Robert Fitz-Hamon was probably made within these years; see Dugdale, Baronage, i. 406.

[4] Before printing the extracts from the plea of 33 Edw. I in vol. ii. pp. 33–35, I tried in vain to find the original in the Record Office; since then I have come across it in Tower Misc. Rolls, No. 121, and compared it with the British Museum transcript. The latter omits many redundant words; otherwise it is tolerably accurate. For 'Blackhouse,' p. 32, read 'Bachus;' insert 'quo ad hoc,' before 'quod,' p. 33, l. 13; for 'guildam aulam' read 'guildaulam,' p. 33; insert 'fieri' after 'tunc,' p. 34, l. 14; for 'burgensiae' read 'burgensia,' p. 34, l. 15. Close Roll, 5 Edw. III, p. 1, m. 11, dorse, and Patent Roll, 2 Edw. III, p. 2, m. 16, dorse, also relate to dissensions between the Abbot and burgesses.

[5] At a Common Day, held on Friday after the Assumption of the Virgin Mary, 1547, it was agreed by all the commoners there assembled, 'that all the fre burgesses of this Towne that nowe be or hereafter shal be, shal be brethren of ye Guyld Merchaunt within this Towne. And that they shall yerly gyve their attendaunce upon the Aldermen and Counselers at ye same Guyld, upon this paynes,' etc. The penalties follow, burgesses too poor to pay being exempt. (Cooper, Annals of Camb., ii. 2.)—Jan. 12, 1555, it was agreed by the aldermen and four-and-twenty, 'that the Guylde, called Guyld Merchant, shall be kept agayne, as yt hathe been used in tymes past, on the Sondaie after Relique Sondaie, and that Mr. Maior shal be Alderman thereof for this yere, and the Tresorers Masters thereof' (Ibid., ii. 93). Similar entries occur in the years 1556, 1585, 1597, and 1639, relating chiefly to the fees levied on all the town officers and freemen in support of the Gild Merchant, which seems to have been merely an annual dinner (Ibid., ii. 97, 105, 410, 580; iii. 293).

[6] The charter asserts that they had the liberties which it grants, in the time

Cirencester	1403	Vol. ii. p. 363.
Congleton	[Edw. I]	Ormerod, iii. 36; Yates, Congleton, 106[1].
Coventry	1267–8	Vol. ii. pp. 48, 364; Poole, Coventry, 8, 28, 29[2].
Daventry (?)		Baker, Northampton, i. 318.
Derby	1204	Vol. ii. p. 51; Simpson, Derby, i. 75.
Devizes	Edw. I	Vol. ii. p. 53[3].

of William the Conqueror. For this Gild, see also Dallaway, Sussex, i. 149, 150, 163. The following is taken from Patent Roll 24 Hen. VI, p. 2, m. 2:—

'De gilda siue fraternitate fundanda pro Ciuibus Ciuitatis Cicestrie.—Rex Omnibus ad quos, etc., salutem. Sciatis quod cum nos considerantes qualiter Dominus Henricus Secundus, quondam Rex Anglie, progenitor noster, per litteras suas patentes per nos confirmatas concessit tunc Ciuibus Ciuitatis Cicestrie qui tunc fuerunt de gilda mercatoria ibidem omnes libertates et liberas consuetudines suas tam infra burgum et extra, et eas habere vbique ita plene, libere, quiete et honorifice sicut plenius et honorificencius habere solebant tempore Regis Henrici, Aui sui, prout in litteris et confirmacione predictis plenius continetur; Jamque ex parte Ciuium Ciuitatis predicte de gilda predicta existencium nobis est intimatum qualiter ipsi quandam fraternitatem siue gildam perpetuam de vno Magistro et quatuor Custodibus ac fratribus et sororibus eiusdem tam de ipsis quam de aliis, qui ex eorum deuocione de eadem fraternitate siue gilda esse voluerint, quorum Maior dicte Ciuitatis semper pro tempore existens sit Magister fraternitatis predicte, nostra mediante licencia de nouo erigere, fundare, vnire, creare et stabilire proponant et in bona voluntate existant: et ea occasione eorum pie intencioni in hac parte fauorabiliter inclinati, de gracia nostra speciali ac ex mero motu nostro concessimus,' etc. Seven persons are named, who are given power to found such a fraternity, for themselves and others wishing to join it. The Mayor is always to be master; there are to be four wardens. The Society is established 'in honore omnipotentis dei, beate Marie Virginis, matris eius, Sancti Georgii et tocius Curie celestis,' and is to be called the fraternity of St. George. They are to constitute a body corporate, and can hold property of 10*l.* yearly value for the support of a chaplain and poor brethren and sisters.

[1] Henry de Lacy granted the burgesses: 'quod predicta villa sit liber burgus, et burgenses nostri ejusdem ville habeant propter libertates suas in perpetuum gildam mercatoriam, cum omnibus libertatibus, liberisque consuetudinibus ad hujusmodi gildam pertinentibus,' etc. (Ormerod, iii. 36). According to Head's Congleton, 34, this charter was granted before the close of 1272.

[2] The Prior and Convent of Coventry held one half the town (Madox in Addit. MS., Mus. Brit., 4530, ff. 18–24); hence the grant of the Gild to the former.

[3] This Gild, according to A History of Devizes (1859), p. 399, 'was, in the middle of the 18th century, maintaining a flickering kind of existence. Its function had long become virtually obsolete; and though the proceedings continued to be made a matter of record down to the year 1770, the convocations of the members appear to have served little other purpose than an excuse for convivial meetings at the Antelope, and now and then an organised resistance to the inroads of itinerant hawkers.'

Doncaster	1467	Record Office, Conf. Roll 1 Eliz., p. 2, No. 5; Miller, Donc. App., p. vii.; Tomlinson, Donc., 31; Smith, Old Yorkshire, i. 227.
Dunheved	1231–72	Vol. ii. pp. 85, 370.
Dunwich	1200	Rot. Chart., 51, 211; Gardner, Dunw., 100, 103; Stubbs, Charters, 311; Addit. MS., Mus. Brit., 23963, fol. 6.
Durham[1]	Henry II	Vol. ii. p. 41.
Fordwich	Henry II	Munic. Corp. Com. 1835, p. 987; Reliquary, xviii. 66–68.
Gainsborough	Edw. III	Vol. ii. p. 91.
Gloucester	1200	Vol. ii. p. 373.
Grampound	1332	Rec. Office, Pat. 1 Rich. II, p. 6, m. 7; Willis, Notitia Parl., ii. 97; Merew. and Stephens, 752.
Grantham	1462	Street, Grantham, 107; Merew. and Stephens, 970; Addit. MS., Mus. Brit., 4530, ff. 184–185.
Guildford[2]	1256	Vol. ii. p. 91; Hist. of Guildford, 163, 191*–199*.
Hartlepool	1230	Vol. ii. p. 106; Surtees, Durham, iii. 386.
Hedon	1348[3]	Vol. ii. p. 107.

[1] Perhaps Dublin ('Dublinia') is written in the original instead of Durham ('Dunelina,' 'Dunelmia').—'The corporate body, at a public meeting in 1728, made several bye-laws, whereby they imposed a fine on all intruders who should exercise their trades within the city, and ordained that the mayor should hold four guild days in the year, at three of which every person claiming title to his freedom should be called, before he should be admitted.' (Mackenzie and Ross, Durham, ii. 425; Fordyce, Durham, ii. 215.)

[2] At a Guild Merchant held Dec. 1, 1800, the mayor and approved men made regulations for the market (Hist. of Guildford, 305).

[3] Merewether and Stephens (Hist. of Boroughs, 552) give an abstract of a royal charter of 1272 similar to that of Edward III, but I was unable to find any trace of the former at the Record Office.

Helston	1201	Vol. ii. p. 108; Plac. de quo War., 108.
Henley-on-Thames.	1300	Vol. ii. p. 108.
Hereford	1215[1]	Vol. ii. p. 109; Madox, Exch., i. 412; Johnson, Customs of Hereford, 120, 177, 178.
Horsham		Hist. of Horsham, 5[2].
Ipswich	1200	Vol. ii. p. 115.
Kendal		Sayer, Westmorel., 122; Nicholson, Kendal, 138–141.
Kingston-upon-T.	1256	Roots, Charters, 28.
Kirkham	1295	Fishwick, Kirkham, 209; E. Baines, Lanc., ii. 483.
Lancaster	1337	Simpson, Lanc., 275; Rec. Office, Conf. Roll 5 Eliz., m. 28.
Leicester	1107–1118[3]	Vol. ii. p. 136; Hist. MSS. Com., 1881, pp. 413, 420–423.
Lewes	[Stephen]	Vol. ii. p. 145.
Lincoln	Henry II[4]	Vol. ii. pp. 146, 378; Madox, Firma Burgi, 235.
Liskeard	1239–40	Vol. ii. p. 108.
Liverpool	1229	Vol. ii. p. 148; Plac. de quo War., 381.
Lostwithiel	1269	Brady, Treatise, 45; Rec. Office, Conf. Roll 4 Hen. VII, p. 2, No. 15.

[1] The date 1154 (vol. ii. p. 109), though mentioned in the original, is probably an error of the scribe. See Archaeol. Assoc., Journal, vol. 27, p. 457. The component parts of the document probably belong to the period of the three Edwards. Cf. Ibid., vol. 27, p. 476, with Wotton, Leges, 517; and Duncumb, Heref., i. 300, with i. 323; and see Johnson, Customs, 24.

[2] The author of the Hist. of Horsham (p. 5) says: 'It appears that at some early period there was a merchants' guild in this town, founded on the same principles as that in Chichester, for the name of Horsham is in one of the ancient lists, still extant in that city, of those places which had guilds in connection with it.' I visited Chichester for the purpose of examining these 'lists,' but I could not find them among those town records to which I had access.

[3] The charter refers back to the reigns of William the Conqueror and William Rufus.

[4] The charter of Henry II (vol. ii. p. 146) grants the Gild to the citizens just as they had it 'in the time of Edward, William, and Henry, kings of England.'

Ludlow	1461	Charters of Ludlow, 11–12, 294.
Lyme Regis	1284	Willis, Notitia, ii. 427[1].
Lynn Regis	1204	Vol. ii. p. 151.
Macclesfield	1261	Vol. ii. p. 171.
Malmesbury	1205–22	Vol. ii. p. 171.
Marlborough	1163	Vol. ii. p. 173[2].
Morpeth		Hodgson, Morpeth, 67; Munic. Corp. Com. 1835, p. 1629.
Nantwich		Vol. ii. p. 174.
Newcastle-under-L.	1235[3]	Vol. ii. p. 178.
Newcastle-upon-T.	1216	Vol. ii. p. 183; Plac. de quo War., 601.
Newport	1292	Eyton, Shropsh., ix. 134.
Nottingham	Circa 1189	Vol. ii. p. 190; Plac. de quo War., 618[4].
Orford	1229	Rec. Office, Conf. Roll 1 Rich. III, p. 2, No. 1; Munic. Corp. Com. 1835, p. 2509.
Oswestry	1398	Vol. ii. p. 191.
Oxford	Henry II[5]	Vol. ii. pp. 28, 192, 386; Stubbs, Charters, 167.
Petersfield	1147–73	Vol. ii. p. 387.

[1] Edward I granted (1284): 'quod Villa nostra de Lime in Comitatu Dorset de cetero liber burgus sit, et quod Homines ejusdem Villae sint liberi Burgenses. Ita quod Gildam habeant Mercatoriam, cum omnibus ad hujusmodi Gildam spectantibus in Burgo predicto, et alias Libertates et liberas Consuetudines per totam Angliam et Potestatem nostram quas Burgensibus nostris de Melecumbe per Cartam nostram nuper concessimus,' etc. (Willis, Notitia, ii. 427. Cf. Hutchins, Dorset, ii. 41; Roberts, Lyme R., 22, 23, 70; Luders, Elections, ii. 6, 7.

[2] 'Idem Vicecomes reddit Compotum de C.s. pro hominibus de Merleberga, ut habeant Gildam suam. In thesauro liberavit. Et Quietus est.' (Pipe Roll 9 Hen. II, p. 46.)

[3] This is the correct date, not 1225; 'anno nono' stands in the MS., but 'decimo nono' is intended. See vol. ii. p. 181; Pitt, Staffordsh., 354; Cal. Rot. Chart., 51; Rep. Record Com. 1837, p. 471.

[4] The grant of the Gild by John (vol. ii. p. 190) was confirmed by Henry III, Edw. II, Edw. III, Rich. II, Henry V, and Henry VI. (Heathcote, Charter of Hen. VI, p. 4.)

[5] The grant of Henry II alludes to the existence of the Gild in the time of Henry I. William de Cheney, mentioned in vol. ii. p. 192, is said to have held office under Stephen (Boase, Oxford, 45).

Plymouth	1440	Rec. Office, Conf. Roll 2 Hen. VII, p. 1, No. 2, Worth, Plym., 115; Jewitt Plym., 249.
Pontefract	1484	Fraser, Elections, i. p. vii; Fox, Pontef., 21; Hist. MSS. Com., 1881, p. 271.
Poole	1568	Sydenham, Poole, 182; Hutchins, Dorset, i. 75.
Portsmouth	1256	Allen, Portsm., p. 97, and App. xv.
Preston	[Henry III]	Vol. ii. p. 194.
Reading	1253	Vol. ii. p. 202.
Rochester	1227	Vol. ii. p. 387.
Ruyton	1308–9	Munic. Corp. Com. 1835, p. 2858.
Saffron-Walden (?)	Henry IV	Braybrooke, Audley End, 250–51; Player, Sketches, 81.
Salisbury	1176[1]	Vol. ii. p. 209.
Scarborough	1253	Vol. ii. p. 388.
Shrewsbury	1209	Vol. ii. p. 211.
Southampton	Henry II	Vol. ii. p. 213.
Stamford	1462	Nevinson, Stamf., 109; Butcher, Survey, 6, 25, 26[2].
Sunderland	1247	Vol. ii. p. 388.
Totnes	1216	Vol. ii. p. 235; Devon. Assoc., vi. 104–106, xii. 323–324.
Wallingford	Henry II[3]	Vol. ii. p. 244.
Walsall	1440	Vol. ii. p. 248.
Wenlock	1468	Merew. and Stephens, 1001.
Weymouth	1442	Ellis, Weym., 98–99.

[1] Charters of John and Henry III refer back to grants of the Gild by Henry I and Henry II; see vol. ii. p. 209, and Record Office, Charter Roll 13 Henry III, mem. 10.

[2] Edward IV granted: 'quod villa siue burgus illa sit deinceps liber burgus corporatus, . . . iidem aldermannus et Burgenses . . . liberi Burgenses sint, et Gildam mercatoriam habeant,' etc. (Record Office, Conf. Roll 2 Rich. III, p. 3, m. 16.)

[3] The concession of Henry II speaks of the Gild as existing in the reigns of Edward the Confessor, the two Williams, and Henry I.

Wigan	1246	Sinclair, Wigan, 41, 101; Placita de q. W., 372; E. Baines, Lanc., ii. 171.
Wilton	Henry I	Vol. ii. p. 251.
Winchester	Henry II	Vol. ii. p. 252; Archaeologia, vol. 49, p. 214; Bracton's Note-Book, § 294.
Windsor	1277	Vol. ii. p. 270; Willis, Notitia Parl., i. 38.
Woodstock	1453	Vol. ii. p. 392.
Worcester	1226–7	Vol. ii. p. 273; Cal. Rot. Chart., 35.
Wycombe	1316	Vol. ii. p. 277.
Yarmouth	1208	Vol. ii. p. 277; Rymer, Foedera, i. 100.
York	1130–1	Vol. ii. pp. 21, 279; Bracton's Note-Book, § 16.

WALES.

Aberystwyth	1277	Placita de q. W., 817; Rec. Office, Pat. 20 Hen. VIII, p. 2, m. 2; Meyrick, Card., 503; Archaeologia Camb., 1873, 1879, iv. 171, x. p. xxxiv.
Bala	1324	Vol. ii. p. 48; Record of Caern., 173–177; Munic. Corp. Com. 1837–8, pp. 7–8.
Beaumaris	1296	Vol. ii. p. 15; Record of Caern., 158–161.
Builth	1278	Vol. ii. p. 355.
Caerwys	1290	Vol. ii. p. 356.
Cardiff	1341	Vol. ii. p. 358.
Cardigan	1249	Vol. ii. p. 359; Merew. and Stephens, 778.
Carnarvon	1284	Vol. ii. p. 48; Record of Caern., 184–187.
Conway	1284	Vol. ii. p. 48; Williams, Aberconwy, 180.

Criccieth	1284	Vol. ii. p. 48; Record of Caern., 196–198.
Denbigh	1333	Williams, Denbigh, 119.
Flint	1284	Taylor, Flint, 30, 38, 40; Munic. Corp. Com. 1835, p. 2680.
Harlech	1284	Vol. ii. p. 48; Record of Caern., 191–195.
Haverfordwest	[Henry III]	Archaeologia Camb., 1879, x. p. xxxix.; Rec. Office, Conf. Roll 1 Mar., p. 1, m. 19.
Hope	1351	Vol. ii. p. 375.
Kenfig	1360	Vol. ii. p. 132.
Lampeter	1332	Bristol, Council-House, Little Red Book, fol. 204.
Llanfyllin	Edw. II	Powysland Club, Coll., iii. 60, 91–92.
Llantrissaint	1346	Vol. ii. p. 150.
Montgomery	1227	Powysland Club, Coll., xxi. 2–26; Eyton, Shrop., xi. 134, 137[1].
Neath	1359	Vol. ii. p. 175.
Nevin	1343–76	Lewis, Top. Dict. of Wales, ii. 252.
Newborough	1303	Vol. ii. p. 48; Rec. of Caern., 178–181; Munic. Corp. Com. 1835, p. 2808.
Newport	1385	Vol. ii. p. 189.
Newton	1363	Vol. ii. p. 385.
Overton	1291–2	Petyt MS., i. 229–231, ii. 302; Rec. Office, Charter Roll 20 Edw. I, No. 55.
Pwllheli	1355	Rec. Office, Pat. 6 Rich. II, p. 2, m. 12.

[1] Henry III also confirmed a grant of Hubert de Burgh, which contained *inter alia* these words: 'Concessimus etiam eisdem Burgensibus quod habeant ferias et mercata cum Gilda Mercatoria et cum omnibus libertatibus et liberis consuetudinibus ad dictas ferias et dicta mercata pertinentibus.' (Record Office, Charter Roll 13 Hen. III, p. 1, m. 2.)

Rhuddlan	1278	Record of Caern., 179; Munic. Corp. Com. 1835, p. 2838; Rec. Office, Charter Roll 6 Edw. I, m. 1 [1].
Swansea	1655	Vol. ii. p. 234.
Welshpool	[Edw. I]	Vol. ii. p. 389.

IRELAND.

Armagh	1613	Stuart, Armagh, 645; Liber Munerum, Pt. i. p. 4.
Athboy	1407	Munic. Corp. Com., Irel., 119; Merew. and Stephens, 810.
Ballyshannon	1613	Munic. Corp. Com., Irel., 1005; Allington, Ballysh., 54.
Belfast	1613	Liber Munerum, Pt. i. p. 2; Hist. of Belf., 13; Munic. Corp. Com., Irel., 698; Merew. and Stephens, 1621.
Boyle	1613	Munic. Corp. Com., Irel., 1009.
Carlow	[1296]	Ibid., 165; Ryan, Carlow, 60–62; Chartae Hibern., 37; vol. ii. p. 134.
Carrickfergus	1612	Munic. Corp. Com., Irel., 748.
Cashel	1638	Ibid., 464.
Charlemont	1613	Ibid., 791.
Cork	1342	Cusack, Cork, 159; Rec. Office, Pat. Roll 7 Car. I, p. 7, No. 8.
Donegal	1612	Munic. Corp. Com., Irel., 1056.
Drogheda [2]	1229	Vol. ii. p. 58; Chartae Hibern., 25, 46, 49, 54.

[1] This charter of 6 Edw. I is similar to that granted to Builth in the same year; see vol. ii. pp. 355, 356.

[2] Drogheda originally included two distinct boroughs, separated by the Boyne—Drogheda in Louth ('versus Uriel') and Drogheda in Meath ('versus Midiam'). The Gild was conferred upon the former in 1229; and upon the latter in 1247. See Gilbert, Documents, 108; Munic. Corp. Com., Irel., 808.

Dublin	1192	Vol. ii. p. 59; Munic. Corp. Com., Dublin, 270; Rot. Chart. 79.
Dundalk	1379	Liber Munerum, Pt. i. p. 30; Munic. Corp. Com., Irel., 891; Merew. and Stephens, 776.
Dungannon	1612	Liber Munerum, Pt. i. p. 38; Gale, Inquiry, p. cxviii.; Merew. and Stephens, 1610.
Dungarvan	1609	Liber Munerum, Pt. i. p. 40.
Dunleer	1678	Munic. Corp. Com., Irel., 917.
Enniskillon	1612	Liber Munerum, Pt. i. p. 16.
Galway	1568	Tenth Rep. MSS. Com., App. v., 444, 445, 486.
Hillsborough	1662	Munic. Corp. Com., Irel., 922.
Inistioge	1209	Vol. ii. p. 134; Gale, Inquiry, p. xii.; Munic. Corp. Com., Irel., 521; Merew. and Stephens, 418.
Jamestown	1622	Munic. Corp. Com., Irel., 1094.
Kilkenny	[Henry III]	Vol. ii. p. 134; Munic. Corp. Com., Irel., 533; Liber Munerum, Pt. i. p. 21.
Lanesborough	1665	Munic. Corp. Com., Irel., 337.
Lifford	1613	Ibid., 1106.
Limerick	1292[1]	Ibid., 344–345; Chartae Hibern., 36; vol. ii. p. 59.
Mallow	1612	Liber Munerum, Pt. i. p. 8.
Newry	1612	Liber Munerum, Pt. i. p. 12.
Rosbercon	1300	Chartae Hibern., 39; vol. ii. p. 134.
Ross, New	Edw. III.	Chartae Hibern., 84–85; vol. ii. p. 134.
St. Johnstown	1627	Munic. Corp. Com., Irel., 1290.

[1] The patent refers back to a grant made by John before he became king of England. See also Liber Munerum, Pt. i. p. 24; Merew. and Stephens, 1460.

Sligo	1613	Ibid., 1264; Liber Munerum, Pt. i. p. 35.
Thomastown	[Henry III]	Munic. Corp. Com., Irel., 573.
Tralee	1613	Liber Munerum, Pt. i. p. 19.
Tulske	1662	Munic. Corp. Com., Irel., 444.
Waterford	1205	Chartae Hibern., 13, 22, 42, 60, 65[1].
Wexford	1317	Vol. ii. p. 250[2].
Wicklow	1613	Munic. Corp. Com., Irel., 635[3].

We miss the name of London in this list. Stubbs, Brentano, and many others speak of a London 'Gilda Mercatoria' of the twelfth and thirteenth centuries[4]; but we seek in vain for any mention of it in the city charters, in 'Liber Albus,' 'Liber Custumarum,' the 'Letter Books,' 'Liber de Antiquis Legibus,' and the other London chronicles. One of the best authorities on the constitutional history of London rightly asserts that 'there is no trace of its ever having been a general mercantile gild[5].' Some maintain that 'communa' is only another name for this fraternity[6]; but 'communa' by no means occupies the same place in the charters and other records of London as 'Gilda Mercatoria' in the corresponding muniments of English towns. The recognition of the London commune by John and the barons in 1191, as a reward for the assistance of the citizens against Longchamp[7], could scarcely

[1] See also Munic. Corp. Com., Irel., 579–586; Liber Munerum, Pt. i. p. 39; Merew. and Stephens, 472, 1676; Ryland, Waterford, 216, 217; Tenth Rep. MSS. Com., App. v., 337.

[2] For a translation of the grant of 7 Jac. I, see Gale, Inquiry, App. No. 17.

[3] Besides the towns mentioned in this list, others may be added which had charters conferring on them 'all the privileges' of certain boroughs having a Gild Merchant. See the tables in Appendix E. But it is not certain that in every such case all the privileges of the mother-town were actually adopted. The Gild Merchant of a town was sometimes modelled after that of another. See vol. ii. pp. 3, 21, 22, 28, 59, 91, 194, 359, 370, 375; Jewitt, Plymouth, 249.

[4] Stubbs, Const. Hist., i. 461, 476, 706 (but see also iii. 609); Brentano, Gilds, p. xciii; Madox, Firma Burgi, 30; Loftie, London, i. 128, 165; Green, Conquest of Eng., 461; Thompson, Essay, 119; Wilda, Gildenwesen, 244, 248.

[5] Norton, Commentaries, 25, 26; see also Riley, Memorials, p. l.

[6] Stubbs, Const. Hist., i. 461, 475, 476, 481; Loftie, London, i. 128, 166, 167.

[7] Stubbs, Const. Hist., i. 476, 705,

have been equivalent to a confirmation of the Gild Merchant. London, pre-eminent above the other boroughs of England as a franchised community, would not have been obliged to contend for the possession of that which was freely conferred upon many of its neighbours. In speaking of the erection of the London commune in 1191, Richard of Devizes says: 'Neither King Richard nor his father, Henry II, would have granted it (the 'communa' or 'conjuratio') for a thousand thousand marks of silver;' again, 'Communia est tumor plebis, timor regni, tepor sacerdotii[1].' There was nothing in the nature of the Gild Merchant to warrant such language[2]. —The highly-privileged Cinque Ports seem also to have dispensed with this institution[3], though their federation is spoken of as one great brotherhood—a 'guilda fraternitatis,' a 'brotheryceld'[4]. Nevertheless, London, and probably some of the Cinque Ports, virtually exercised all the rights attached to this franchise, though the name and formal organization were unknown in these towns[5]. An analogy is found in the frank-pledge,

and Charters, 265; Coote, Lost Charter, 286–288; Hovedon, iii. pp. lxxviii., 141; Benedict of Peterborough, ii. 214; Richard of Devizes, 416; Ralph de Diceto, ii. 99; Giraldus Cambrensis, iv. 405; Walter of Coventry, ii. 5, 6.

[1] Cf. the sermon of Jacques de Vitry 'contra iniquitates communitatum, que vicinos opprimunt et ecclesiasticam libertatem impugnant.' (Giry, Documents, 58.) Cf. also below, p. 30.

[2] After the year 1191 the term 'commune' of London in this sense does not again appear. The technical expressions 'juraverunt communam' and 'conjuratio' are evidently borrowed from the continent, where the communal movement was then at its height. The Londoners attempted to secure the political independence implied on the continent by the term 'commune.' But the subsequent history of the city shows that this privilege was not ratified by the crown, the relations of London to the latter remaining virtually unchanged. Hence we may safely regard the appearance of the 'communa' or 'conjuratio' on English soil as the feeble reflex of the great continental burghal revolution,—as a transient isolated phenomenon devoid of pregnant consequences. Richard of Devizes, in using the strong language cited above, manifestly had in mind the 'commune' of the continent. In the London sources of the thirteenth century 'communa' is frequently employed in the sense of the commons, common people, populace. See Liber de Antiq. Legibus, ('[populus] vocantes se Communam Civitatis,' etc.), 16, 17, 54, 55, 80, 91, 148–154; cf. also 19, 35, 129.

[3] Fordwich, one of the subordinate members of the Cinque Ports, is the only exception that I have met with.

[4] Mantell, Cinque Ports Meetings, pp. iii. and 7; Hist. MSS. Com., 1874, p. 430.

[5] Outside of London even the term 'Gild Merchant' was occasionally used in speaking of the latter city. See vol. ii. pp. 86, 258 (n. 1), 354. In

which, in some places, did not exist in name, although in reality mutual responsibility was enforced [1].

It is almost impossible by means of the charters to determine the exact date of the foundation of the gilds mentioned in the list. Such expressions as 'sicut tempore Edwardi' and 'a tempore quo non extat memoria' are to be regarded with distrust; while, on the other hand, privileges long in existence are often granted as though they were new additions to the town constitution [2].

These and other circumstances render it difficult to ascertain the extent to which the Gild Merchant prevailed among the boroughs of England. During the reign of Edward I, 166 towns were summoned to send representatives to parliament [3]; in theory, this comprehended the whole number of boroughs then in existence. Making allowance, on the one hand, for those boroughs which, in reality, received no summons [4], and, on the other hand, for the incompleteness of our list, due to the paucity of the materials at our disposal, it may safely be stated that at least one-third—and probably a much greater proportion—of the boroughs of England were endowed with this gild in the thirteenth century; that, in fact, it was not an adventitious institution, but one of the most prevalent and characteristic features of English municipalities [5].

several other prominent towns, such as Exeter, Norwich, Northampton, whose constitutions were modelled after that of London, no Gild Merchant appears to have existed. There is likewise no trace of this fraternity in Colchester.

[1] Palgrave, Commonwealth, i. 202. In Chapter vii. I shall attempt more fully to explain the absence of the term Gild Merchant in the above-mentioned towns.

[2] For examples, see vol. ii. pp. 210, 211; Rot. Chart., 51, 211; Records of Nott., i. 8, 12. Merewether and Stephens generally overlook this point (e. g. Hist. of Boroughs, 118, 468). On the other hand, I agree with them in their conclusion that such general words as 'sicut tempore Edwardi' and the like are not to be construed literally, but merely 'import an enjoyment of rights for a considerable time' (Hist. of Boroughs, 187).

[3] Palgrave, Parl. Writs, i. p. i. *et seq.* (Calendar); Stubbs, Const. Hist., ii. 257, iii. 484; Pearson, Middle Ages, ii. 476; Gneist, Verfassungsgesch., 388. The ablest discussion of the subject is contained in Dr. Riess's Gesch. des Wahlrechts, 19–21.

[4] Riess, 21–35; Cox, Parl. Elections, 155–158.

[5] Such expressions as 'habeant Gildam mercatoriam, sicut alii Burgenses habent' also indicate its wide prevalence. See vol. ii. pp. 106, 123, 134, 250, 375; Munic. Corp. Com., Irel., 573.

CHAPTER II.

Organization and Constitution.

Fortunately a document is still extant which informs us what the burgesses of Ipswich did after receiving the charter given at large in the last chapter (pp. 7, 8), furnishing us with a vivid outline of the general machinery of town government during the reign of King John, and showing us how the burgesses proceeded to establish and organize their Gild Merchant.

The charter was granted May 25, 1200. On Thursday, June 29, the whole community of the borough, having assembled in the church-yard of St. Mary at the Tower, elect two bailiffs to take charge of the provostship of the borough, and four coroners to take charge of the pleas of the crown, and to see that the bailiffs treat rich and poor justly. On the same day it is ordered by the common counsel of the town that there shall be in the said town twelve sworn capital portmen, just as there are in other boroughs of England, who are to have full power to govern and uphold the said borough with all its liberties, to render the judgments of the town, and to ordain and do all things necessary for the maintenance of its honour.

On Sunday, July 2, the bailiffs and coroners, with the assent of the community, appoint four approved and lawful men of each parish, who elect the twelve capital portmen. The latter having been sworn faithfully to govern the borough and maintain its liberties, and justly to render the judgments of its courts, cause all the townsmen to stretch forth their

hands toward the Book (the Gospels), and with one voice solemnly to swear to obey and assist the bailiffs, coroners, and every one of the twelve portmen in safeguarding the borough, its new charter, its liberties and customs, in all places against all persons, the royal prerogative excepted. On the same day the new charter is placed in charge of two approved and lawful men, who are sworn faithfully to preserve it, and to produce it at the request of the community.

On Thursday, July 13, the bailiffs, coroners, and other capital portmen[1] assemble and ordain that, in the future, all customs of the town shall be collected by the bailiffs and four approved and lawful men of the borough; and that they shall yearly pay at the king's Exchequer the accustomed ferm of the town. They also ordain that there shall be two beadles to make attachments and to execute the commands of the bailiffs, coroners, and capital portmen. One of the beadles is to be keeper of the prisoners arrested by order of the bailiffs. A common seal is to be made to serve in important matters touching the community of the borough; and it is to be placed in charge of three or four approved and lawful men of the borough.

'Likewise they ordain that in the said borough there shall be elected by the common counsel of their town one approved, lawful, and fit man to be alderman of the Gild Merchant in the same borough; that four approved and lawful men shall be associated with him; and that the alderman together with his four assistants shall be sworn well and faithfully to maintain the said Gild and all things appertaining to it.'

The new charter is to be sent to the full county courts of Suffolk and Norfolk, there to be read and made public. No burgess, if he is a merchant, shall be quit of custom on his wares in the town, unless he is in lot and scot in the common taxes and businesses of the town.

[1] The two bailiffs, John Fitz-Norman and William de Belines, were also coroners and capital portmen; in like manner, the names of the other two coroners, Philip de Porta and Roger Lew, are found in the list of the twelve capital portmen.

On Sunday, September 10, the whole community assemble in the presence of the bailiffs, coroners, and other capital portmen to hear all the new ordinances [1], to which, having been read before the people of the town in the church-yard of St. Mary at the Tower, the whole community unanimously assent. Two bailiffs [2] are then elected for the next year, and four men to help them collect the customs. Two beadles are likewise chosen on the same day.

On Thursday, October 12, the bailiffs, coroners, and other capital portmen, and the whole community having come together in the church of St. Mary at the Tower, the bailiffs show the common seal, which has been newly made. Three men [3] are appointed to take charge of it and are duly sworn. The common charter is likewise to remain in their custody.

On the same day an alderman is elected, and four persons who are to be associated with him [4]. All five are sworn that they will govern the Gild Merchant of the borough of Ipswich well and faithfully, and all the articles relating to it. Afterwards the alderman and his four colleagues declare, in the presence of all the people of the town, that all who are of the freedom of the town shall come before the alderman and his associates on a certain day—when and where to be hereafter made known—to constitute a Gild, and to give their hanse to the said Gild. The bailiffs, coroners, and other portmen, and the whole community then discuss how better to maintain the said Gild. They ordain that the alderman, and all future aldermen, ought to have for the profit of the Gild the monopoly of buying and selling certain kinds of stone and marble; that the alderman on oath shall make due return, annually before the bailiffs and coroners, of all profits arising during the year from the purchase and sale of the above-mentioned wares; and that no inhabitant of Ipswich shall buy or sell,

[1] I.e. those made on Thursday, July 13.

[2] The same two who were elected on Thursday, June 29—John Fitz-Norman and William de Belines.

[3] The two bailiffs and Philip de Porta.

[4] These five were also capital portmen. Roger Lew was one of the four colleagues of the alderman.

within the bounds of the town, any of the said wares, except only the alderman of the Gild, for the use and profit of the fraternity, under penalty of forfeiting all the said merchandise thus bought or sold.

On the same day (October 12, 1200) the whole community grant the twelve capital portmen Odenholm meadow, for the sustentation of their horses, in return for the labour which they shall perform on behalf of the community. Likewise it is ordained by the whole community that the laws and free customs of the town shall be entered in a certain roll, to be called the Domesday; the latter is to remain in custody of the bailiffs of the town, that they may know how to perform the duties of their office. All the statutes of the Gild Merchant shall be entered in a certain other roll, as is customary elsewhere in cities and boroughs where there is a Gild Merchant. This roll the alderman shall always have in his possession, that he may know how to discharge his duties[1].

For further details concerning the organization of the Gild we must turn to the records of other towns. As at Ipswich, so in many other places, the fraternity was under the direction of an alderman[2] and his associates. The latter, whose number generally varied from two to four, were called stewards ('senescalli')[3], skevins ('scabini')[4], or wardens ('custodes')[5]. In some towns one or two stewards[6], masters[7], wardens[8], or

[1] This document will be found *in extenso* in vol. ii. pp. 116–123. The translation in Wodderspoon's Memorials of Ipswich, 77–84, is imperfect.

[2] Vol. ii. pp. 33, 119–127, 130, 131, 151–169, 172, 192, 214–225, 244, 246, 279, 380; Thompson, Leic., 60, 68, and Munic. Hist., 50; Gentlem. Magaz., 1851, vol. xxxv. pp. 596, 597.

[3] Vol. ii. pp. 172, 214–225.

[4] Vol. ii. pp. 152–166, 214–225, 380. Cf. English Gilds, 46, 48, 54, 64, 72–75, etc.; Madox, Firma Burgi, 27. In 1423 the Gild of Wisbech had two 'clerks of the market or skyvens' (Watson, Wisbech, 147; cf. Rep. MSS. Com., 1883, pp. 294–296). For the ancient judicial 'scabini' of the continent, see Stubbs, Const. Hist., i. 121, 135, 237, 684; Du Cange, Gloss.; Spelman, Gloss. For their administrative and judicial functions in continental towns, see Giry, St. Quentin, 28–67; von Maurer, Städteverf., i. 241, 568.

[5] Vol. ii. p. 380.

[6] Vol. ii. pp. 12, 23, 25, 36, 43, 93–103, 148, 202–207, 237, 238, 240, 241, 289–347, 353, 375. 'Eldestuardis' occurs in one record (ii. 12).

[7] Vol. ii. pp. 12, 49, 50, 154, 207, 248, 249, 250, 271, 363, 364.

[8] Vol. ii. pp. 15, 23, 42, 45, 49, 50, 109, 203, 204, 207; cf. also ii. 167, 242, 248.

keepers[1] occupied the place of the alderman. Among other functionaries, with whom we occasionally meet, are ferthingmen[2], levelookers[3], gildans[4], heyners[5], tasters ('gustatores')[6],

[1] Vol. ii. pp. 15, 207, 270. 274.

[2] Vol. ii. pp. 13, 14, 93-97. We also meet with them in Scotland (Acta Parl. Scot., i. 432, 434, 437). During the reign of Richard II 'le fferthynman' of the Holy Trinity Gild of Grimsby is mentioned. 'Certificacio Gilde Sancte Trinitatis de Grymesby in Comitatu Lincolnie sequitur in hec verba . . . Et quod le Alderman habebit duas lagenas ceruisie, et le fferthynman vnam lagenam, et similiter Decanus accipiet vnam lagenam; et quod quisquis seruabit suam sedem ob pena dicte Gilde; et quod nullus se iactat verbis ampullosis seu aliis continenciis pompesis in presencia Gilde, nisi fuerit in officio, et tunc cum mensura et racione. . . . Et insuper quod nullus recipiatur in fraternitatem predicte Gilde, nisi sit Burgensis et honestus homo, et hoc per assensum communitatis tocius predicte Gilde,' etc. (Record Office, Misc. Chancery, Gilds, 172). Jamieson's derivation of 'fferthingman' from farthing, 'ane penny-maister, or thesaurar' (Dict., ii. 191) is probably wrong. The view of Du Cange (Gloss., 'ferthingmanni') and Robertson (Scotl. under Early Kings, i. 298), that they were originally officers set over a 'ferthing' or quarter of a town, like the French 'quarteniers,' is far more plausible.

[3] Vol. ii. pp. 41–43, 148, 174, 175; Munic. Corp. Com., 1835, pp. 2662 (Denbigh), 2709 (Liverpool), 2848 (Ruthin); Gomme, Index of Munic. Offices, 33, 61. Pennant says that at Chester these officers collected money called 'leave-lookerage' for leave of non-freemen to retail (Tour in Wales, 167). Newcome informs us that the aldermen of Ruthin appoint 'leave-lookers to inspect provisions' brought to market for sale, the tolls of which form part of their revenue (Hist. of Ruthin, 90). At Wigan, where they were called 'gatewaiters or leavelookers,' it was their duty to see that 'foreigners' (*i.e.* unprivileged strangers) paid their fines for licence to reside and trade in the town (Sinclair, Wigan, i. 210, ii. 12, 148, 177, 222). 'Leve'—frequently misread as 'lene'—is mentioned in many town charters among the tolls and exactions from which the burgesses are freed. (See vol. ii. pp. 191, 356; Rotuli Chart., 51, 138, 175, 211; Record of Caern., 159, 163, 175, 179, 185, 193, 196. In all these cases the proper reading is 'leve.') The etymology of the word is evident (English 'levy.' Cf. Du Cange, Gloss., 'levea'; Höhlbaum, Urkundenbuch, iii. No. 570). In the Welsh *quo warranto* pleas under Edward III it is thus defined: 'Et per illud verbum lene [i.e. leue] [clamant] quod nichil soluant in aliquo foro seu mercato ad Ministros vocatos lenelokers [i.e. leuelokers].'—Record of Caernarvon, 161, 165, 176, 181, 187, 195, 198. The form 'levagium' or 'lavagium' also occurs (Hoare, Modern Wilts, vi. 759). A Yarmouth document of 12 Hen. VI defines it thus: 'de quadam custuma vocata levagio, videlicet, duobus denariis de quolibet pondere dolii cujuscunque mercandise in quocunque vase in portu predicto levate in terram vel de uno vase in aliud capiende' (Swinden, Yarm., 56; cf. ibid., 29; Blomefield, Norf., xi. 401).

[4] Vol. ii. p. 277.

[5] Vol. ii. p. 392; cf. ii. 278 and Nares, Gloss., 'heyn.' It seems to mean keeper or conservator; the root-word is probably 'hegen.' See Grimm, Wörterb., 'hegen.' For 'Mill-heymers,' etc. [i.e. mill-keepers], which may be a misreading of the same word, see Allen, Liskeard, 269. The functions of the heyners at Yarmouth were similar to those of the gild-holders at Ipswich (vol. ii. p. 131).

[6] Vol. ii. pp. 98, 335.

cupbearers ('pincernae')[1], an usher or doorkeeper ('ostiarius')[2], a dean[3], clerks[4], a treasurer[5], a marshal[6], sergeants[7], collectors[8], bailiffs[9], and provosts[10]. At Barnstaple there were four ferthingmen, four aldermen, a cup-bearer, and a doorkeeper[11]; at Guildford, a steward, four ferthingmen, a clerk, a marshal, four cup-bearers, and two hall-wardens[12]; at Lynn, an alderman or master, four skevins or wardens, a dean, a clerk, a treasurer, and thirteen chaplains[13]; at Preston, three stewards and four or more aldermen[14]; at Southampton, an alderman, a steward, four skevins, a chaplain, an usher, and sergeants[15]. The alderman and other officers were generally elected by the brethren[16], and, before entering upon their duties, were sworn faithfully to discharge the same[17]. Generally speaking, the functions of the head of the fraternity were to preside at its meetings, to see that its statutes were not infringed, to take charge of its common seal[18] and muniments, to settle disputes among the brethren[19], to see that the dues were collected[20], and to look after the possessions of the Gild[21]. In these duties he was assisted by his colleagues, who in some boroughs had charge of the goods and chattels of the brotherhood[22]. The revenues consisted mainly of entrance-fees, fines,

[1] Vol. ii. pp. 13, 14, 93–98, 100, 293, 319, 326, 331, 335, 375.
[2] Vol. ii. pp. 13, 14, 161, 214, 215.
[3] Vol. ii. pp. 154, 158, 160–162.
[4] Vol. ii. pp. 93–104, 154, 160, 196, 239, 335, 364.
[5] Vol. ii. p. 154.
[6] Vol. ii. pp. 93–98.
[7] Vol. ii. p. 215.
[8] Vol. ii. pp. 6, 95, 96.
[9] Vol. ii. pp. 23, 174.
[10] Vol. ii. p. 135.
[11] Vol. ii. pp. 13, 14.
[12] Vol. ii. pp. 93–98.
[13] Vol. ii. pp. 151–170, 380.
[14] Vol. ii. pp. 196–199.
[15] Vol. ii. pp. 214, 215.
[16] Vol. ii. pp. 43, 121, 157, 164.
[17] Vol. ii. pp. 43, 70, 71, 121, 162, 164, 203.
[18] 'Sigillum commune Gilde Mercatorie Sancte Trinitatis' was the inscription on the seal of the Gild of King's Lynn in 1459 (Mackerell, Lynn, 256). The Gild of Leicester had a seal in 1259 (Thompson, Leic., 78). See also vol. ii. pp. 14, 304, 374.
[19] See below, Chapter v.
[20] Vol. ii. pp. 42, 43, 290, 325.
[21] Vol. ii. pp. 69, 122, 249, 323–327, 332. Many Gilds had lands and tenements. See vol. ii. pp. 12, 14, 37, 151, 155, 157–172, 203, 208, 246, 271, 380; Thompson, Leic., 77; Gentleman's Magaz., 1851, vol. 35. p. 597; Norfolk Archæology, ii. 196; Spelman, Gloss., 'scabini.'
[22] Vol. ii. pp. 153–166, 172, 216. At Southampton the steward kept the money and rolls, under the seal of the alderman (vol. ii. p. 216).

and assessments, to which in a few cases were added certain tolls [1] and the profits derived from the monopoly of dealing in certain commodities [2].

To become a gildsman ('gildanus,' 'congildanus,' 'frater')[3], or to obtain the gildship ('gilda,' 'societas')[4], it was necessary to pay certain initiation-fees [5], in some places called the 'rights' ('jura') of the house [6]. This payment was probably proportioned to the means of the new member, or to the extent to which it was likely that he would use the privileges of the society [7], much discrimination being shown in favour of the relatives of gildsmen [8]. At Leicester one of the entrance-fees was called the 'hanse' [9]; at Launceston, the 'bika' [10]; at Totnes, the 'fordede' or 'fordele' [11]. The new comer was also required to produce sureties, who were responsible for the fulfilment of his obligations to the Gild—answering for his good conduct and for the payment of his dues [12]. He then took an oath of fealty to the fraternity, swearing to observe its laws, to uphold its privileges, not to divulge its counsels, to obey its officers, and not to aid any non-gildsman under cover of the newly-acquired 'freedom' [13]. Residence in the same town was not generally a qualification for membership [14]. Nor

[1] Vol. ii. pp. 42, 43.

[2] For these monopolies, see below, p. 49.

[3] Vol. ii. pp. 4–8, 121, 152, 157, 204, 206–208, 215–230, 246, 289–346. I find 'congildanus' in only one record (ii. 390).

[4] Vol. ii. pp. 4–8, 93–104, 289–340.

[5] Vol. ii. pp. 4–8, 13, 68, 85, 93–104, 110, 123–125, 137, 138, 153, 154, 160, 164, 197, 203, 208, 211–214, 240–242, 289–347, 354, 377.

[6] Vol. ii. pp. 4–6, 293–317. At King's Lynn a fine and the 'jura' were paid, the latter being fees to the officers of the Gild (ii. 153, 154, 160). For the English form 'rytes,' 'ryghtes,' etc., see English Gilds, 54, 58, 60, 86, 357.

[7] Vol. ii. p. 354.

[8] Vol. ii. pp. 4–8, 137, 138, 157, 160, 164, 196, 197, 203, 216, 289–340. Generally speaking, entrance to the Gild was by purchase, inheritance, and gift, but the last-mentioned was rare, and even those who inherited the right to membership had to pay certain fees.

[9] Vol. ii. pp. 137, 138; cf. ii. 292. See also Appendix C.

[10] Vol. ii. p. 85: cf. also ii. 370. 'Bika' evidently means a measure of some sort. Probably persons entering gave a 'bika' of ale. Cf. Du Cange, Gloss., 'bicheta.'

[11] Vol. ii. pp. 240–241.

[12] Vol. ii. pp. 4–8, 85, 93–103, 137, 138, 153, 154, 197, 240, 290–339. Two sureties most frequently occur.

[13] Vol. ii. pp. 16, 17, 68, 81, 138, 142, 153, 164, 207, 214, 243, 257, 259, 291–348, 377.

[14] See below, Chapter v.

were women excluded from the latter[1]. Notwithstanding the clause contained in many borough charters in favour of villeins[2], they were debarred from enjoying the privileges of the Gild in some towns[3].

[1] Vol. ii. pp. 4–8, 14, 49, 50, 125, 127, 128, 197, 212, 240, 289–340. For the connection of women with brewing and other trades in the middle ages, see Liber Albus, lx.; Rot. Parl., ii. 278, 281; Statutes of the Realm, 19 Hen. VII, c. 21; Bickerdyke, Ale, 124–134; Davies, Southamp., 279; cf. vol. ii. p. 304.

[2] The clause given above on p. 8 is the one that prevails in town charters of the thirteenth and fourteenth centuries. In the same category, though the wording is different, are to be included the passages in Glanvill, in the laws of Newcastle (*temp.* Hen. I), and in the charters of Lincoln and Sunderland: see below, p. 59; Stubbs, Charters, 162, 166; Brand, Newc., ii. 130; Surtees, Durham, i. 297. The laws ascribed to William the Conqueror, and charters granted to Nottingham, Haverfordwest, Egremont, Derby, and West Looe, in the thirteenth century, mention simply residence in the borough a year and a day as the condition of emancipation from villeinage: see Thorpe, Anc. Laws, 213; Stubbs, Charters, 167, 309; Archaeologia Cambrensis, 1879, vol. x. p. xxxviii.; Jefferson, Cumberl., ii. 25; Rot. Chart. 138; Merewether, Case of West Looe, 32. The law-writers of this same period state the condition to be residence in a demesne town of the king: Bracton, i. 48, iii. 292; Britton, i. 200, 209; Fleta, 111; see also Coke on Littleton, i. 137 b; Madox, Firma Burgi, 128. For other notices concerning the status of villeins in boroughs, see Welfitt, Minutes, No. 24; Statutes of the Realm, 9 Rich. II, c. 2; Liber Albus, 610; Eyton, Shrops., x. 133; Rot. Chart., 206; Record of Caern., 223; Rot. Parl., iii. 212, 294, 296, 448, 499; Noorthouck, London, 91; Riley, Memorials, 23, 58; Oliver, Exeter, 318; Eden, Poor, i. 30; Bracton's Note-Book, § 1288; Madox, Firma Burgi, 42; and see the next note.

[3] Vol. ii. pp. 164, 317. Neither the German medieval maxim as regards privileged towns 'die Luft macht frei,' nor the acrimonious aspersion of Guibert de Nogent against the 'execrable' villein-freeing 'communes' of France—'de execrabilibus communiis illis in quibus contra jus et fas violenter servi a dominorum jure se subtrahunt'—applied to English towns of the twelfth and thirteenth centuries. (Arnold, Studien, 196–201; von Maurer, Städteverf., i. 379–389; Guibert de Nogent, De Vita Sua, in Bouquet, xii. 257; Wauters, Libertés communales, 36–37; Warnkönig, Fland. Rechtsgesch., i. 350, 358; Gengler, Codex, 763, 851, 935; Stubbs, Const. History, i. 478.) This privilege seems to have been more highly prized by the municipalities of the continent than by the boroughs of England, owing, perhaps, to the former's greater autonomy. The burghers of Speyers had it graven in letters of gold over the main portals of the cathedral (Arnold, Studien, 198). The enfranchisement from villeinage on the continent was not conditional either on the possession of land or ability to contribute to the pecuniary burdens of the community, as was frequently the case in England and Wales (see below, p. 59). English burgesses seem to have regarded 'nativi' and 'villani' with less favour than is commonly supposed. The townsmen of Hereford looked down with contempt upon 'natives and rusticks of auncient tyme, who pay to theire lords corporall services of diverse kinds . . . [they] are not of our condition, neither shall they have our lawes and customes,' etc. (Duncumb, Heref., i. 339, 343, 344). Villeins were expressly

The constitution of the Andover fraternity is particularly interesting. It was divided into two houses, the superior and the inferior [1]. There were two classes of brethren, those possessing the 'free gild' and those having the 'villein' or 'hanse gild' [2]. The 'forwardmen' [3] constituted a higher rank of gildsmen, while the rights of the 'custumarii' [4] were evidently restricted. There were dues at Andover called 'scot-pennies,' 'hanse-pennies,' and 'sige-pennies' [5]. With the permission of the brethren, the gildship could be transferred, in return for a payment by the recipient. In 1296 it was ordained by the stewards and brethren of Andover that no one in the future shall sell or give away his gild except to a rela-

excluded from becoming burgesses and holding office in some towns, and from entering the Gild Merchant and craft gilds in others. See vol. ii. pp. 82, 164, 317; Rep. MSS. Com., 1870, p. 109; Jones, Breckn., ii. 12; Liber Albus, 33, 452, 681; Blomefield, Norf., iii. 130; Izacke, Exeter, [60]; Welfitt, Minutes, No. 37; Merew. and Stephens, 29, 723, 762, 847, 972; Statutes of the Realm, 8 Hen. VI, c. 11; cf. also vol. ii. p. 300.

[1] Vol. ii. pp. 293, 304, 326, 329, 332–335.

[2] Vol. ii. pp. 11, 296, 313, 317, 320–323, 329, 332, 333, 336–340. We meet with a case where a person held both the 'hanse' and the 'free' gild (ii. 323; cf. also ii. 294, 295, 299, 'alteram gildam').

[3] Vol. ii. pp. 4–8, 292–347. There is only one other borough in connection with which I have met this term. At Hereford, in 1348, the witnesses of debts contracted were called 'forwardesmen': 'habeant tallias seu papiras, et tales testes qui vocantur Forwardesmen, qui contractibus talibus sunt, vel esse debent' (Wotton, Leges Wallicae, 517). Here 'forewardesmen' evidently equals 'covenant-men,' being derived from the Anglo-Saxon 'forword' = covenant (Schmid, Gesetze, Gloss., 'forword'). Hence the word is not to be confused with the burghal 'wardmen,' whom we find at Axbridge, Witney, and Sandwich (Somerset. Arch. Soc., xv. 24; Rep. MSS. Com., 1872, p. 300; Boys, Sandw., 521, 522; Giles, Witney, 45). In the Anglo-Saxon laws of King Edgar it is ordained that official witnesses should be appointed in boroughs and hundreds—twenty-three in every large borough, and twelve in small 'burghs' and in every hundred. 'And of such sworn men let there be at every bargain two or three as witness.' (Thorpe, Anc. Laws, 116.)

[4] Vol. ii. pp. 10, 11, 297, 308, 312, 320, 324. I venture the conjecture, that the 'constumarii,' were identical with the 'hanse' gildsmen, and that they differed from the 'free' gildsmen in being subjected to periodical payments called 'hanses,' and 'customs.' 'Homme coustumer,' in vol. ii. p. 227, means anyone subject to the payment of customs (i.e. tolls). At Göttingen there used to be both a Gild of Merchants and a Hanse. The latter seems to have been subordinate to the former, consisting apparently of smaller tradesmen and artisans. See Schmidt, Göttingen Urkundenbuch, i. 178; Hans. Geschichtsblätter, 1878, p. 23; Nitzsch, Niederdeutsche Genossenschaften, 19–21. 'Hense . . . is eyn besonder afgescheiden dink van der Kopgilden' (Nitzsch, 21).

[5] Vol. ii. pp. 328, 329, 333, 335. For scot-pennies, see also vol. ii. pp. 13, 14.

tive within the third degree; and those thus admitted shall pay a half of a mark to the Gild; but if the father gives it to his son, the payment shall be only two shillings[1]. Others generally paid sixty shillings[2]. The gildship was in some cases granted only for life, that is to say, without hereditary succession[3]. For very serious offences the gildsmen of Andover fulminated a decree of excommunication against the erring brother—commanding 'that no one receive him, nor buy and sell with him, nor give him fire or water, nor hold communication with him, under penalty of the loss of one's freedom[4].'

The meetings of the Gild Merchant were generally called 'gilds'[5], or 'morning-talks' ('morghespeche,' 'maneloquium')[6]. The number held yearly varied in different places and in different periods; annual, semi-annual, and quarterly meetings seem to be the most common[7]. At these assemblies new

[1] Vol. ii. p. 294.

[2] Vol. ii. pp. 289–340. The entrance-fee for strangers at King's Lynn was also sixty shillings, 2 Edward III, but it was afterwards changed to a hundred shillings (ii. 154, 160).

[3] Vol. ii. pp. 8, 289, 291, 297, 299.

[4] Vol. ii. pp. 319, 320; cf. also ii. 330.

[5] Vol. ii. pp. 6, 13, 14, 34, 91–103, 132, 150, 175, 184, 189, 198, 214, 255, 273–275, 277, 358.

[6] Vol. ii. pp. 4–8, 137, 143, 152–154, 165, 289–347; Thompson, Leic., 30; Gentleman's Mag., vol. 35. p. 597. 'Congregatio' also occurs (ii. 45, 154). The term 'mornspeche,' 'morwespeche,' etc. was also applied to social and craft gilds. (English Gilds, 45–71, 116, 117; Hist. MSS. Com., 1883, p. 295. 'Post loquelam matutinalem' is thus used in Record Office, Misc. Chancery, Gilds, 240.) Originally the term seems to have referred to meetings of the town judiciary. 'Hanc donationem feci apud Oxoniam in placitis Regis, quae appellantur Moregespeche' (Registrum de Osney, cited in Spelman's Gloss., p. 422). At Marlborough four annual meetings for the admission of burgesses and the election of town officers bore this designation (Waylen, Marlb., 93). The expression was also used at Reading in the reign of Henry VI, probably for assemblies of the burgesses (Coates, Reading, 59). In the same sense we meet with 'comon sprach,' or 'consultacion and speche,' at Windsor in the time of Elizabeth (Bodleian MSS., Ashmole 1126, fol. 12). At Canterbury the Gildhall was called 'spech-house' anterior to the reign of Henry VI (Somner, Cant., i. 66; Hasted, Cant., i. 109). In Germany 'morgensprache' at first signified meetings of the town magistracy, especially for judicial purposes; but later on it seems to have been confined to the assemblies of the craft and mercantile gilds (Grimm, Wörterbuch, vi. 2581; Höhlbaum, Urkundenbuch, Glossary in vol. iii.; Götze, Stendal, 109; Wehrmann, Zunftrollen von Lübeck, 70–94; von Maurer, Städteverf., ii. 56, 261, 382, 432, iii. 185, 200, 600; Gengler, Codex, 170, 337, 549, 570, 585).

[7] Vol. ii. pp. 4–8, 34, 68–70, 83, 92–103, 152, 162, 165, 214, 289–347; Thompson, Munic. Hist., 50.

members were admitted ; punishment was inflicted for breaches of the statutes ; and new ordinances were made. Each Gild had its own peculiar enactments, defining its privileges and prescribing rules of conduct for its brethren [1].

At the regular meetings, or on days specially appointed, there was much eating, drinking, and merry-making [2]; 'drynkyngs with spiced cakebrede and sondry wynes, the cuppes merilly servyng about the hous [3].' At Ipswich the brethren came together once a year 'familiarly to feast and to refresh their bodies with food and dainties [4].' At Yarmouth they regaled themselves with 'frometye, rost byffe, grene gese, weale, spyce cake, good bere, and ale.' 'Which feast was, for the most part, yearly holden [on Trinity Sunday], at the cost of four of the brotherhood successively. . . The hall itself being at that time richly hanged and adorned with cloth of Arras Tapestry, and other costly furniture ; not sparing any dainty fare which might be had for money. At which feast all private quarrels and emulations were heard and ended to the glory of God and mutual love amongst neighbours [5].' At Andover and King's Lynn this gathering was called the 'potacion' or 'drinking' ('potacio') [6]. Among the bibulous brethren of Winchester 'to drink the Gild Merchant' meant to hold a meeting of the fraternity [7]. The officers who superintended the preparation of the feast were called 'pincernae' at Barnstaple, Guildford, and Andover [8]; and 'heyners' at Yarmouth [9].

Among the fines and entrance-fees we sometimes find a collation, a bull, beer, and wine, which were doubtless

[1] Vol. ii, *passim*.

[2] Vol. ii. pp. 5, 15, 34, 93–103, 107, 125, 128–131 155, 215, 232, 233, 249, 255, 256, 277–279, 329, 332, 336; English Gilds, 402; Gentleman's Mag., 1851, vol. 35. p. 597; Thompson, Leic., 30.

[3] Maire of Bristowe, p. 79.

[4] Vol. ii. p. 128.

[5] Vol. ii. pp. 278, 279. This has the flavour of the well-known passage in Tacitus, Germania, c. 22: 'de reconciliandis invicem inimicis . . . plerumque in conviviis consultant.'

[6] Vol. ii. pp. 153, 160–162, 290, 291, 293, 319, 331, 332.

[7] Vol. ii. pp. 255, 256.

[8] Vol. ii. pp. 13, 14, 93–98, 100, 293, 319, 326, 331, 335, 375.

[9] Vol. ii. p. 392.

generally consumed at the festive gatherings of the Gild[1]. At Guildford, bull-baiting was a favourite amusement of the brethren; new members being generally obliged to promise to feast the Gild and to provide a bull[2]. While the Andover compotation (which was generally held on Sunday) lasted, each steward received daily four gallons of beer; each cup-bearer, three gallons; each clerk, two gallons; each taster, one gallon[3]. At Southampton the alderman and steward were each allowed two gallons of wine every evening during the festivities; the chaplain, the usher, and each of the skevins, one gallon[4].

Good works and devotional exercises, though not wholly neglected, constitute a less prominent element in the Gild Merchant than in most other gilds. In many towns the fraternity bore the name of some patron saint, a preference being shown for the tutelage of the Holy Trinity[5]. Chaplains and priests of the Gild are often mentioned[6]. 'If laudable and praiseworthy,' says the Yarmouth Chronicler, 'is the bond of amity and friendship among mere natural men, then how much more especially is that which is amongst Christians, who be tied by the strongest bond of faith and religion; but, above all, by those Christians which be of one fraternity, bound and linked together by solemn oath[7].' Attendance at the funeral of deceased members, prayers for the dead, assistance to brethren in sickness, poverty and distress, 'alms-deeds and works of charity,' the settlement of quarrels, without litigation, by the Gild officers, and

[1] Vol. ii. pp. 85, 123–125, 137, 143, 153, 158, 160, 208, 240–242, 302, 377; Thompson, Leic., 77, and Essay, 50; Gentleman's Mag., vol. 35. p. 597. In 11 Edward I, Robert de Reydone was admitted to the Gild of Ipswich; 'et profert communitati unam pipam vini' (Ipswich Archives, Little Domesday, fol. 90).

[2] Vol. ii. pp. 93–105. Cf. English Gilds, 192; Hemingway, Chester, i. 222; Bailey, Transcripts, 75–77; Noake, Worc., 109; Ferguson and Nanson, Carl., 26, 276, 292.

[3] Vol. ii. p. 335.

[4] Vol. ii. p. 215.

[5] Vol. ii. pp. 14, 22, 60, 65, 70, 126, 151–170, 249, 270, 271, 276–279, 380, 392; Dobson and Harland, Preston Guild, 20; Hunt, Bristol, 57; Benson and Hatcher, Salisbury, 79.

[6] Vol. ii. pp. 15, 127, 155, 159, 160, 163, 164, 169, 174, 214, 215, 239, 277; Parker, Wycombe, 132, 133.

[7] Vol. ii. p. 278.

abstinence from slander and malicious imputations against the brethren, are some of the precepts inculcated by the statutes [1].

What the ordinances of the Gild Merchant laid most stress upon, what distinguished it from other gilds, will be elucidated by a discussion of its aim and functions, for which the way is now cleared.

[1] Vol. ii. pp. 23, 26, 50, 65, 126–129, 152, 155, 158, 159, 161–166, 169, 207, 215, 216–218.

CHAPTER III.

Functions of the Gild. Privileges of Gildsmen.

If, in viewing the past, one's vision is not impaired by the rose-hued glasses of sentimentality, one must perceive that the medieval gildsmen were not always animated by lofty motives of brotherly love and self-abnegation in their behaviour toward their fellow-men. Indeed, the desire for gain or self-advantage, which from the outset was the *raison d'être* of the Gild Merchant and many other gilds, degenerated at times into the most reprehensible forms of selfishness. The gildsman may have been kind and loving toward those of his own fraternity, but he was too often harsh and oppressive toward non-gildsmen [1].

What then was the aim of the Gild Merchant? To this fundamental question two very diverse answers have hitherto been given, both of which are very evasive. Some assert

[1] See vol. ii. pp. 32–35, 51–53, 147, 155, 156, 184, 189, 232, 379. During the two centuries preceding the Reformation we frequently meet with strong condemnation of the conduct of the gilds. Their exactions 'after their own sinister mind and pleasure,' the 'outrageous hardships' to which they subject the public, the unreasonable ordinances 'for ther owne singler profite and to the comen hurte and damage of the people,' etc. See Statutes of the Realm, 9 Edw. III, i. c. 1; 25 Edw. III, iii. c. 2; 37 Edw. III, c. 5; 2 Rich. II, i. c. 1; 15 Hen. VI, c. 6; 12 Hen. VII, c. 6; 19 Hen. VII, c. 7; 22 Hen. VIII, c. 4; 28 Hen. VIII, c. 5; Rot. Parl., ii. 277, 280, iv. 75, 507, vi. 220.—'Picketing' is not a modern invention. In 1614 the Company of Mercers and Ironmongers of Chester ordered T. Aldersey (who had married the niece of an ironmonger) to shut up his shop. He refused. 'Soe daie by daie two others [of their Company] walked all daie before the said shop and did forbidd and inhibitt all that came to the said shopp for buyinge any wares there, and stopped such as came to buy wares there.' The mayor ordered them to depart, 'upon their oathe'; they answered that they were sworn to their Company; and so 'they walked and remayned and plaied their wilfull parte.' (Harl. MS., Mus. Brit., 2054, ff. 89, 90.)

that it was merely a private society of merchants, having nothing at all to do with the administration of town affairs[1]. Most writers, on the other hand, regard 'Gilda Mercatoria' merely as another name for borough or city, ignoring the word 'Mercatoria' as if it never had any specific meaning[2]. Some authors who have made very pregnant general statements concerning this brotherhood, do not even trouble themselves to inquire what its constitution and functions were[3]. Untrammelled by any views now prevalent, or by any preconceived hypothesis, we will let the sources tell their own story.

The proceedings at Ipswich on receipt of King John's charter[4], have already given us some intimation of the object of the society. At least, they plainly show that the Gild had lifted itself above the plane of an ordinary private fraternity; that important functions of some sort were intrusted to it by the burghal community. These functions are expressly expounded in the following records.

In 1330 the mayor and community of the town of Bedford were summoned to answer to the king by what warrant they claim to have a Gild Merchant, with all its liberties and customs in lands, islands, and pastures, and all its other appurtenances, so that anyone who is not of that Gild may not merchandise with them in city, borough, town, or sokes; and that they may be quit of toll, etc. [Other privileges are enumerated. The burgesses show a charter of Richard I, granting a Gild Merchant and other liberties.] And the same mayor and community are questioned by Richard of Aldborough, the prosecuting crown-attorney, concerning the

[1] For example, Merewether and Stephens, Hist. of Boroughs, pp. xiii., xvi., 117, 353, 437, etc.

[2] Thompson, Gentleman's Mag., 1851, vol. 35. p. 596: 'The guild was not a mere adjunct of a town community but the only formal embodiment of the population into a civic fraternity.' See also vol. ii. p. 142; Thompson, Munic. Hist., pp. ix.–xi., 49, 100, 119; Wilda, Gildenwesen, 251; Brentano, English Gilds, pp. xciii., cv.; Hüllmann, Städtewesen, iii. 73.

[3] Brady, Treatise, 47, 84.

[4] Above, pp. 23–26.

nature of the said Gild, and who the persons are that belong to it, and what profit they levy by reason of the same Gild. They say that both burgesses of the town and any others dwelling in the same, from the time that they take the oath to preserve the liberties of the town and the king's peace and to maintain all other privileges touching the aforesaid town and Gild, are admitted into this Gild, so that they can then sell all kinds of merchandise by retail, and everywhere enjoy the aforesaid immunities and liberties, just as the burgesses themselves by reason of their liberties aforesaid [1].

In a *quo warranto* suit, during the reign of Edward III, the burgesses of Beaumaris were called upon to explain the meaning of the various clauses of the charter granted to them in 1296: 'And by the clause, that they may have Gild Merchant, etc., they claim that all who remain in the aforesaid town, and desire to enjoy the aforesaid liberties, and have been sworn in the presence of the aforesaid burgesses, and have paid hanse (i.e. a certain payment called hanse) and lot and scot with them, shall be in the aforesaid Gild; and then they can freely merchandise in the aforesaid town without paying toll there or elsewhere; and that no one who is not sworn and admitted into the aforesaid Gild can merchandise in the said town without the licence and consent of the said burgesses [2].'

A similar declaration was made by the burgesses of Conway, Bala, Newborough, Carnarvon, Harlech, and Criccieth, during the same reign [3].

In 1372 the mayor and bailiffs of Bristol thus interpreted the Gild:—'And as to the profits arising from fines levied for having the freedom within the town of Bristol, the aforesaid mayor and bailiffs say that the town of Bristol is an ancient borough, and a mayor, bailiffs, and a community have existed in the same borough beyond the memory of man; in which borough the said mayor, bailiffs, and com-

[1] Vol. ii. pp. 16–18. [2] Vol. ii. pp. 15, 16. [3] Vol. ii. p. 48.

munity, and their antecessors and predecessors, have had a free Gild Merchant, in the said town and suburbs, and all things that pertain to a Gild Merchant, namely, to buy and sell in the same town free and exempt from customs and toll, and to have various other privileges such as pertain to the Gild Merchant. By virtue of the said Gild and freedom the said mayor and bailiffs and their predecessors have been accustomed all this time to levy, for their own use, a certain payment from all who were admitted to the freedom and society of the Gild, for having the freedom of the aforesaid Gild, according to what could be reasonably agreed upon between them[1].'

In 1350 the mayor and burgesses of Macclesfield defined the Gild as follows: 'And by these words, that the burgesses of the said town may have a Gild Merchant, they claim that no one may be admitted as a burgess in the said town except with the assent and concurrence of the aforesaid mayor and burgesses; and that no one may have the freedom to merchandise there as a burgess, unless he is admitted by the aforesaid mayor and burgesses[2].'

In 1280 several burgesses of Newcastle-under-Lyme were summoned by the king for seizing ten fleeces of wool belonging to Richard the Baker of Stafford. In their defence, they say that King Henry III granted the burgesses of Newcastle 'that the burgesses of the said town might have a Gild Merchant in the said borough with all liberties and free customs belonging to such a Gild; and that by the liberty of this Gild the custom of the borough is such that no one is allowed to sell or buy any wool in the aforesaid borough, except those who are in the aforesaid Gild, save by sacks or some other great weight.' They say that they seized Richard's wool because he bought it contrary to the liberty of the Gild; and they show a charter of 19 Henry III[3], granting them a Gild

[1] Vol. ii. p. 354.
[2] Vol. ii. p. 171.
[3] This is the correct date. See above, p. 14, n. 3.

Merchant with all the liberties and free customs pertaining to such a Gild. 'Being asked what liberties they claim to have pertaining to the aforesaid Gild, they say that no one, unless he should be of the liberty of the Gild, can cut cloth to sell in the town, nor cut up meat and fish, nor buy fresh leather, nor purchase wool by the fleece, except by great weight, i.e. by the stone, sack, or half sack. . . . This privilege that no one may buy wool by retail in the said town of Newcastle, unless he be of the liberty of the said Gild, pertains to that Gild.' In another suit of the same year the burgesses of Newcastle-under-Lyme again state that Henry III gave them a Gild Merchant with all liberties and free customs belonging to such a Gild; 'and that the custom pertaining to the said Gild in the said borough is such that no one, except burgesses of the said borough, is allowed to cut cloth, nor sell by the ell, nor to keep a shop within the said borough, unless he be in the said Gild of the said borough[1].'

In 1235 or 1236 the abbot of Buckfastleigh and the burgesses of Totnes entered into this agreement, 'that the said burgesses received the said abbot and monks into the Gild Merchant, i.e. that they should be allowed to make all their purchases just like other burgesses, excepting all sales in the name of trade.' For this privilege the abbot and monks were to give the Gild Merchant 22*d.* yearly for all tallage[2].

In 1255 a jury of the men of Totnes declared, 'that the said burgesses and others dwelling in the said borough have among themselves a certain liberty which is called the Gild Merchant, by which they can make foreign merchants free, so that they need not pay toll on their things or wares bought and sold; [but], just as the said burgesses, they are exempt and free. And this they use, and have used from a time beyond the memory of man[3].'

In 1330 the burgesses of Derby were summoned to answer

[1] Vol. ii. pp. 177–181. [2] Vol. ii. p. 235. [3] Vol. ii. p. 236.

to the king by what warrant they claim certain liberties. The prosecuting attorney of the crown questions their right to several of these, including the Gild. He says 'that the Gild Merchant is granted to the burgesses of the said town, as is evident from the charter of the said Henry III'; and he says 'that individual burgesses of the said borough are jointly united; and they assert that they are fellows of the said Gild, and that others are not. And under cover of this Gild Merchant they have been accustomed to oppress the people coming to the said town with vendible wares, so that no one can sell his wares in the said town to anyone except to a member of the said society, and this at the pleasure of the said buyer.' He likewise says 'that these persons do not permit foreign merchants—whatsoever wares they may deal in—to vend their merchandise in the said town except only by wholesale, and this to one of the brethren; and the profit arising therefrom does not accrue to the advantage of the community of the said town, but only to the advantage of those who are of the said society; which usages redound to the injury, oppression, and pauperization of the people. Concerning these things he seeks judgment,' etc. And he says 'that, by reason of the said Gild Merchant, no foreign merchant can purchase by wholesale wine, wool, wool-fells, leather, or lead from any foreigner, except only from those who are of the said Gild; nor can foreign merchants sell any wares except only by wholesale, and this to one of the said society.' The twelve jurors state that certain individuals are jointly united, who assert that they are of the Gild Merchant, and do not permit others to be of the said Gild, unless they satisfy them beforehand[1], in order that they may be in the said Gild. And by reason of this Gild the custom has prevailed among them, that if anyone brings neat's leather, wool, or wool-fells into the said town to sell, and one of the said Gild places his foot upon the thing brought, and sets a price

[1] I. e. pay a satisfactory fine.

for which he would like to buy it, no one but a member of the said society will dare buy it, nor will he to whom it belongs dare sell it to anyone save a member of the said society, nor for a higher price than that which the member of the said society offers. And they [the jurors] say that the profit arising therefrom does not accrue to the advantage of the community of the borough, but only to the advantage of those who are of the said society[1].'

The following is a declaration of the mayor and citizens of Chester:—'And as to these words, "Gild Merchant with all liberties and free customs which they ever freely and quietly have had" [in the said Gild], they claim that yearly, on the Friday next following the festival of St. Dionysius, they can elect from among themselves two stewards of the said Gild, who are of the fraternity[2] of the said Gild; who then shall swear, before the mayor and sheriffs and other citizens of the said city, that they will truly and faithfully render their account of all monies levied by them upon persons entering the Gild, and of all other customs of the said Gild, which have been collected time out of mind and pertain to the said Gild; and that every man who shall be in that Gild, shall be in the freedom and franchise of the said city, and can buy, within the liberty of the said city, all kinds of wares coming to that city by sea or land, without paying any fine[3] thereon; and that no one who is not admitted into the said Gild can buy anything within the liberty of the said city without the licence and assent of the said stewards. And by reason of the said Gild and for the maintenance of the same, they collect, and their predecessors time out of mind have collected, the customs underwritten.' The tolls for various articles follow, concluding with the words, 'and for any other species of merchandise according to what can be agreed upon for granting indulgence to strangers[4].'

[1] Vol. ii. pp. 51–53.

[2] I. e. from among those who are of the fraternity.

[3] I. e. toll.

[4] I. e. according to what can be agreed upon with strangers to allow

'We find,' says a writer in 1656, 'that before the said City (Chester) had any Charter, they used by Prescription divers Liberties, and enjoyed a Guild Mercatory, that is, a Brotherhood of Merchants, and that whosoever was not admitted of that society, he could not use any Trade or Traffick within the city, nor be a Tradesman therein[1].'

These passages show that the words 'so that no one who is not of the Gild may trade in the said town, except with the consent of the burgesses[2],' which frequently accompanied the grant of a Gild Merchant, express the essence of this institution. It was clearly a concession of the exclusive right of trading within the borough. The Gild was the department of town administration whose duty was to maintain and regulate the trade monopoly. This was the *raison d'être* of the Gild Merchant of the twelfth and thirteenth centuries; but the privilege was often construed to imply broader functions—the general regulation of trade and industry[3].

There were so many local peculiarities that it is difficult to analyze the gild-laws in detail. We may, however, venture a few generalizations, which will apply, at least, to many towns.

Even the narrow-visioned gildsmen perceived that to wholly exclude strangers from the trade of the town would militate too much against their own interests and the general prosperity of the borough. But, while they themselves enjoyed the right 'to trade freely' ('libere mercandisare[4]'), unfranchised merchants, when allowed to practise their vocation, were hemmed in on every side by onerous restrictions. Of these the most irksome was probably the payment of toll on all wares that they were permitted to buy or sell. From such payments the gildsmen were generally wholly exempt; even

them to expose the merchandise for sale. For the original of this document, see vol. ii. pp. 43, 44.

[1] Vol. ii. p. 41.

[2] See above, p. 8.

[3] Vol. ii. pp. 4, 7, 139, 143, 144, 167, 204–207, 218–231, 241, 242, 260–264, 290–295, 301–311, 331, 336.

[4] Vol. ii. pp. 33, 34, 155, 254.

when this was not the case, they usually enjoyed discriminating rates of toll in their favour[1]. That this was regarded as the pre-eminent privilege of the gild-brethren, is manifest from the records cited above (pp. 37-43), and from other passages in the sources[2]. At Totnes, especially, this was evidently the principal idea associated with the fraternity[3]. 'He is expelled from the Gild (or 'he leaves the Gild,') and henceforth he must pay toll,' is the substance of several entries in the gild-rolls[4]. 'And no one shall be free of custom,' the Southampton statutes enact, 'unless he provide that he be in the Gild or franchise; and this from year to year[5].' In many cases this immunity extended beyond the limits of the town with which the Gild was connected; for if the borough had a charter granting freedom from toll throughout the realm, all the members of the Gild were generally allowed to participate in this exemption[6].

[1] Vol. ii. pp. 51, 52, 229; Black Book of Admir., ii. 179; English Gilds, 353–356.

[2] Vol. ii. pp. 30, 41, 195; cf. also pp. 120, 124, 125, 150, 200, 274, 377; Black Book of Admiralty, ii. 152, 153; Duncumb, Heref., i. 337.

[3] Vol. ii. pp. 236, 237.

[4] Vol. ii. pp. 240, 320, 324, 325, 333.

[5] Vol. ii. p. 218.

[6] Vol. ii. pp. 16, 17, 47, 140, 158, 174, 183, 202, 245, 251–253, 351, 357, 373, 388, 390. In 1334 the king granted the merchants of Coventry exemption from toll, pavage, etc. for their 'quiet and tranquility' (Merewether and Stephens, 650). Such exactions were appropriately called 'impechiamenta quae mercandisas tangunt' in an early charter of Congleton (Ormerod, Cheshire, iii. 36).

Merewether and Stephens contend that such exemptions belonged only to inhabitant burgesses, and were not bestowed upon non-resident strangers. Otherwise, they argue, the borough would have had the power to make an unlimited number of the king's subjects toll-free throughout the realm (Hist. of Boroughs, 380, 392). But Merewether and Stephens overlook the fact that, with these privileges outside the town, the stranger gildsman received important commercial immunities within the same, which would be a safeguard against any undue extension of the list of 'forinseci' brethren.

Notwithstanding the general words of the charters 'free of toll, etc. throughout England' the exercise of this exemption depended upon priority of grant. If borough A received this privilege before borough B, then A was free from toll in B, but not B in A. See vol. ii. p. 182; Bracton, i. 450; Plac. de quo War., 217; Bracton's Note-Book, §§ 16, 1188. It was doubtless owing mainly to the existence of this privilege that charters of various towns were entered in the records of London, Southampton, Yarmouth, Bristol, and other boroughs. See vol. ii. pp. 364, 390; Liber Custumarum, 655–672; Liber Albus, 534–538; Rep. MSS. Com., 1887, App. iii., 7, 10; Palmer, Yarmouth, 6; Swinden, Yarmouth, 26–39; Hartshorne, Northampton, 26; Peshall, Oxford, 343;

Non-gildsmen were forbidden to keep shops or sell merchandise by retail [1]. In many cases this applied only to certain specified wares, cloth, leather, wool, fish, meat, etc., doubtless the staple commodities of the place [2]. We frequently meet with the injunction, that strangers are not to keep wine-taverns, but they were sometimes allowed to retail wine from ships [3]. Here are some regulations that were made at Reading, probably in the fourteenth century:—

'Also, no foreigner shall buy corn on the market-day before three o'clock, unless he be a person of distinction; and if he buys, he shall lose his corn and remain at the mercy of the provost [4].

'Also, no foreigner shall bring tanned leather to sell into the town of Reading at any time of the year, except only during the fairs; and, if anyone does otherwise, let his goods be seized by the hand of the stewards, and he shall be at their mercy; and when he shall have satisfied them, he shall have his goods again.

'Also, no foreigner shall retail, in the market, linen or woollen cloth, except only at the [accustomed] time; and if anyone acts contrary to this ordinance and is found guilty, his goods shall remain in the hands of the stewards, until he makes amends to them.

'Also, no foreign fish-monger who brings fish to the market to sell, shall cut up his fish to sell, except with the permission of the stewards or bailiffs; and no foreigner can have licence to do this, if any gildsman has any fish to sell.

Davies, Southampton, 229; Bristol Council-House, Little Red Book, ff. 152–223; Merew. and Stephens, 142.

[1] Vol. ii. pp. 16, 17, 19, 52, 54, 110, 132, 150, 175, 180, 181, 189, 192, 250, 255, 358. Cf. also vol. ii. pp. 37, 46, 56, 59, 80, 176, 247, 264, 272; Chartae Hibern., 62–64; Munic. Corp. Com., Irel., 573; Höhlbaum, Urkundenbuch, 382; Thorpe, Anc. Laws, 200; Liber Albus, xcv., 493; Brandon, Inquiry, 22.

[2] Vol. ii. pp. 24, 46, 47, 58, 59, 73, 134, 135, 173, 176, 178, 180–183, 189, 199, 206, 218, 241, 250, 370, 378; Chartae Hibern., 22, 25, 37, 39, 60. 84; Munic. Corp. Com., Ireland, 891; Gale, Inquiry, p. xi.; and see below, p. 46, n. 3.

[3] Vol. ii. pp. 16, 24, 58, 59, 134, 135, 189, 192, 218, 250; Chartae Hibern., 22, 25, 36, 37, 39, 84; Munic. Corp. Com., Ireland, 891; Gale, Inquiry, p. xii. Cf. Brandon, Inquiry, 22.

[4] I. e. liable to be amerced by them.

'Also, no stranger shall bring herring to the market to sell on any day of the week excepting only on one market-day; and if he wishes to stay in the town and sell his fish in the market a second day, he must sell two herrings more than he did the day before, or he must go away; and who does otherwise, shall be at the mercy of the stewards.

'Also, if a stranger who brings herring or fish to sell in the market, has a remnant, and wishes to sell it, no one of the town shall buy it, if the market cannot provide for his neighbours, just as the stranger sold it the day before, and if no one buys it before three o'clock; and who does otherwise shall be at the mercy of the stewards.

'Also, no regrater who is not of the law[1] shall sell by retail old cheese, oil, suet, nor wax; and whoever does it shall be at the mercy of the stewards[2].'

In many places the unfranchised 'forinseci' were not permitted to buy certain things, wool, hides, grain, untanned leather, unfulled cloth, etc.[3], probably, for the most part, scarce articles of consumption and raw materials necessary for the production of the chief manufactures of the town. At times this enactment is particularly directed against buying for re-sale[4]; hence provisions for one's own use, the 'parva mercimonia,' were often expressly excepted[5]. The following is extracted from the ordinances of Southampton (presumably of the fourteenth century):—

'And no one shall buy anything in the town of Southampton to sell again in the same town, unless he be of the Gild Merchant

[1] I. e. of the franchise.

[2] Vol. ii. pp. 205, 206.

[3] Vol. ii. pp. 28, 52, 139, 173, 178, 179, 182, 191, 192, 205, 207, 211, 218, 254, 276. Cf. Liber Custum., p. xxxviii.; Thorpe, Anc. Laws, 200. 'Burgenses de Salop' et de Ludelawe uendiderunt contra libertatem carte sue [i. e. Montgomery] in foro de Montegomer' pannum per Talliam, et emerunt Corea cruda et alia mercandisa recencia' (Record Office, Inquis. Post Mortem 35 Hen. III, No. 22).

[4] Vol. ii. pp. 134, 155, 176, 218. Cf. Liber Albus, xcv., 492.

[5] Vol. ii. pp. 54, 62, 80, 125, 132, 134, 183, 219, 262, 273, 352, 358; Brand, Newc., ii. 131; Rot. Hund., i. 12, 356, 543; Record of Caern., 204. 'Exceptis eciam carnibus et piscibus scissis, caseis, ovis, pullanis, et huiusmodi minutis vendibilibus': Archaeologia Cambrensis, 1879, x. p. xxxiii.; Charters of Carmarthen, 24, 25.

or of the franchise; and if any one does it and is found guilty, all that he has thus bought shall be forfeited to the king. . . . And no one, except a gildsman, shall buy honey, suet, salt herring, nor any kind of oil, nor mill-stones, nor fresh leather, nor any kind of fresh skins; nor keep a wine-tavern, nor sell cloth by retail, except on market and fair day; nor keep more than five quarters of corn in his granary to sell by retail, if he is not a gildsman; and if anyone shall do it and be found guilty, all shall be forfeited to the king[1].'

The two regulations, that non-gildsmen could not buy certain articles, nor sell by retail, sometimes applied only to strangers trading with each other[2]. The same two prohibitions were also generally suspended during fairs and, in some places, on market days[3]. The gildsmen were enlightened enough to perceive that more complete freedom of trade on those days attracted a greater multitude of people to their mart, and thus conduced to their commercial prosperity.

Various other enactments were frequently directed against merchant strangers. They were to bring their wares to 'the Common Hall' or other specified public place, and there expose them for sale[4], in order that their goods could be more easily examined, and their mercantile transactions more readily supervised. They were not to remain in the borough, for the purpose of selling their commodities, longer than forty days[5].

[1] Vol. ii. p. 218.

[2] Vol. ii. pp. 19, 24, 52, 59, 61, 75, 82, 111, 132, 148, 175, 177, 183, 190, 205, 232, 263, 273, 352, 358, 370; Chartae Hibern., 22, 25, 60, 84; Munic. Corp. Com., Ireland, 75; Drake, Eboracum, 206; Tenth Rep. MSS. Com., App. v. p. 297. Cf. Liber Cust., 68.

[3] Vol. ii. pp. 24, 37, 40, 41, 54, 56, 110, 111, 132, 175, 177, 183, 199, 205, 218, 263, 264, 272, 352, 358; Harland, Mamecestre, 191.

[4] Vol. ii. pp. 15, 63. 77, 148, 204, 272, 274; Johnson, Customs, 121; Green, Worc., App. lviii.; Hutchins, Dorset, ii. 46.

[5] Vol. ii. pp. 24, 58, 59, 134, 156, 370; Munic. Corp. Com., Ireland, 573, 891; Gale, Inquiry, p. xi.; Chartae Hibern., 22, 25, 37, 39, 84, 85; Rot. Parl., ii. 332; Wodderspoon, Ipswich, 188. Cf. Chronicles of Edw. I and Edw. II, i. 328; Liber Albus, xcv.; Liber Cust., xxxviii., 68; Norton, Commentaries, 75, 87, 120.

'But wolde God that without longer delayes
Thees galees were unfraught in forty dayes
And in the forty dayes charged again.'
Libell of Engl. Policye, 33, 41.

During this time they were carefully watched, lest they should sell or buy under colour or cover of a faithless gild-brother's freedom, the latter being expelled from the fraternity or otherwise severely punished, if found guilty of this offence[1].

'No one of the Gild nor of the franchise shall avow anything belonging to another as his own, by which the customs of the town may be diminished; and if anyone does it and is found guilty, he shall lose his Gild and his franchise, and the merchandise thus avowed shall be forfeited to the king.'

'No one of the town under colour of purchase, nor under any other kind of colour, shall sell the merchandise of a merchant stranger, by which that merchandise may be sold for more than the merchant can sell it by his own hand, the men of the town thus losing their profit; but merchants who bring their goods to sell, shall sell them by their own hand,' etc.[2].

Hence a non-gildsman could not enter into partnership with a member of the brotherhood[3]. At Leicester the former was not even allowed to share profits with the latter in return for capital lent[4].

The brethren's right of pre-emption is occasionally mentioned[5]. Here is an example from the Southampton ordinances:—

'And no simple inhabitant nor stranger shall bargain for nor buy any kind of merchandise coming to the town before burgesses of the Gild Merchant, so long as a gildsman is present and wishes to bargain for or buy it; and if anyone does it and is found guilty, that which he buys shall be forfeited to the king[6].'

[1] Vol. ii. pp. 10, 11, 66–68, 76, 80, 81, 139, 144, 177, 214, 218, 220, 241, 257, 308, 320, 324. Cf. also vol. ii. pp. 20, 133, 134, 274; Archæol. Assoc., Journal, vol. 27, p. 476; Duncumb, Heref., i. 337; Norton, Commentaries, 334, 341; Brandon, Inquiry, 23. Such offenders were said 'to colour' the goods of strangers (cf. ii. 150, 372).

[2] Vol. ii. pp. 218, 220.

[3] Vol. ii. pp. 144, 290; cf. Liber Cust., 118; Liber Albus, 264, 289.

[4] Vol. ii. p. 144. This rule was relaxed in 1260 (vol. ii. p. 139).

[5] Vol. ii. 52, 65, 134, 205, 218, 301.

[6] Vol. ii. p. 218.

It is probable that already in the thirteenth and fourteenth centuries, as in later times, the officers of the Gild, in some sea-port towns, had the exclusive privilege of making the first offer for the purchase of newly arrived cargoes. The wares thus bought were then disposed of to the brethren at a small profit [1].

At Ipswich the alderman of the Gild had the monopoly of dealing in mill-stones and various other kinds of stone, the profits being devoted to the maintenance of the fraternity [2]. At King's Lynn also the skevins traded in mill-stones for the common good of the society [3].

The gildsman was generally under obligation to share all purchases with his brethren, that is to say, if he bought a quantity of a given commodity, any other gildsmen could claim a portion of it at the same price at which he purchased it [4]. The aim of this law was manifestly to do away with middlemen and keep down prices; it counteracted 'regrating' and 'forestalling,' offences which were regarded as especially heinous when the culprit was not in the Gild [5].

Ungildated merchants could purchase temporary or partial exemption from the many restrictions that harassed their movements [6]. These impositions ('gildagium,' 'gildwite,' etc.) often

[1] Vol. ii. pp. 66–78, 133, 148, 149, 176. We shall return to this subject in Chapter viii.

[2] Vol. ii. pp. 122, 127, 129.

[3] Vol. ii. pp. 153, 155, 165, 170.

[4] Vol. ii. pp. 46, 150, 161, 185, 218, 219, 226, 290, 352. Cf. Black Book of Admiralty, ii. 129; Lyon, Dover, ii. 299, 333, 365. This regulation also applied to some craft gilds. See English Gilds, 210; Reliquary, xx. 143; Riley, Mem., 322; Munim. Gildhallae, iii. 444.

[5] Vol. ii. pp. 19, 176, 185, 205, 206, 228, 352, 353. For the whole subject, in general, see Illingworth, Laws respecting Forestalling, etc.; Browne, Laws of Forestalling, etc.; Wodderspoon, Ipswich, 282, 283; English Gilds, 368; Cunningham, Engl. Industry, 173; Rot. Parl., i. 275, 291, 300, ii. 271, 280, *et passim*; Statutes of the Realm, i. 203, 204, 308, 315, ii. 28. See also vol. ii. pp. 227, 268, 272, 290, 291.

[6] Vol. ii. pp. 33, 34, 42, 43, 109, 142, 147, 173, 190, 235, 241, 246, 247, 262, 264, 345, 374, 378, 379. In some towns, especially those of Wales and the west of England, there were persons called 'chensers,' 'censers,' or 'tensers,' who were allowed to trade in return for certain payments. See vol. ii. pp. 133, 134, 176, 177, 264; Rot. Parl., v. 125; Owen and Blakeway, Shrewsb., i. 173; Merew. and Stephens, 1760; English Gilds, 383–394; Jones, Breckn., ii. 12, 263, 786; Rep. MSS. Com., 1885, App. iv. 402, App. v. 303; Gale, Inquiry, App. No. 6; Statutes, 27 Hen. VIII,

assumed the form of arbitrary extortions, just as the machinery of the Gild as a whole easily degenerated into an engine of oppression [1].

Such were the fetters with which the English Gild Merchant of the middle ages, under the guise of a so-called 'freedom,' completely shackled free commercial intercourse. Whatever may be said in extenuation of its shortcomings owing to the exigencies of the times [2], it must be condemned as an institution that blindly aimed to reduce free competition

c. 7 ('yearly tributors or chencers'); Documents of Clun, 24; Archæol. Assoc., Journal, xxiv. 330; Jacob, Law Dict., older editions, *sub voce* 'censure.' ('Tenser' frequently occurs, but it may be a misreading for 'censer.' Etymologically the two words are distinct, 'tensare' commonly meaning to lay under tribute. See Ducange, Gloss.; Annales Monast., iii. 51, 91, 241, 287; Maitland, Select Pleas, 18; Anglo-Saxon Chronicle, A.D. 1137; Stubbs, Charters, 263; Roquefort, Gloss., 'tencer.') It is difficult to determine the exact status of these tradesmen 'censarii'. Generally speaking, they seem to have been regarded as an inferior class of townsmen. Some of the passages given by the authorities cited above, may refer to a class of persons corresponding to the 'censarius' of Domesday, 'qui terram ad censum annuum tenet' (Ellis, Introd. to Domesday, i. 88; Thorpe, Ancient Laws, 205); but in other cases there can be no doubt that the allusion is to persons paying a tax or 'cense' for permission to trade. For example, in 1466–7, the burgesses of Waterford ordained that 'al manere of sensers, whiche bene fre for terme of life,' were to pay their 'sens' yearly to the bailiff of the town; 'if ony suche sensere will not pay his sens in manere aforsaide, by him or his attornay, he shall forfett his liberte and fredome which he hathe by a special graunt of the Maire and commynes' (Rep. MSS. Com., 1885, App. v. 303). It is possible that, in most cases, they were the villeins 'vagantes sicut mercatores' mentioned by Bracton (i. 48); the passage in English Gilds, 394, concerning 'tensers' calls to mind the passages regarding 'nativi' spoken of above, p. 30. (Cf. below, p. 102.) In Scotland and the north of England certain persons allowed to trade by making payments were called 'stallingers' (Acta Parl. Scot., i. 88, 339, 343, 682; Antiq. Magaz. and Bibliog., ii. 123; Dobson, Preston in Olden Time, 12; Tate, Alnwick, ii. 231; Simpson, Lanc., 279, 282, 309, 310; see also vol. ii. p. 198); a similar class called 'intrants' existed in Canterbury (Welfitt, Minutes, No. 1; Rep. MSS. Com., 1883, p. 138). Cf. also the 'hansarii' and 'custumarii' of Andover (above p. 31).

[1] See above, p. 36. For the term 'gildwite,' see vol. ii. p. 147; Harland, Mamec., 191, 192; Rot. Chart., 45, 91; English Gilds, 185. For 'gildagium,' see vol. ii. p. 374; Plac. de q. War., 108.

[2] Schanz, i. 385, 386; von Ochenkowski, 210; cf. Norton, Comment., 174–198; Cunningham, Politics and Econ., 33–37. We must not forget that it was, in many respects, an age of insulation and separation. The imperfect means of communication isolated the towns, rendering the free competition of to-day difficult to attain. The supply was small and the demand stable (Ashley, Econ. Hist., 93).

to a minimum, regarded what we now consider legitimate speculation as a crime, deflected from the town every powerful current of trade, mercilessly obliterated the spirit of mercantile enterprise, and crushed out every stimulus to extensive production. The municipal atmosphere was surcharged with the spirit of rigid protection, which, like many other important institutions, existed in the borough long before it was adopted by the state. Indeed, mediæval towns of one and the same country regarded each other, from a mercantile point of view, with much more jealousy and hostility than different states now do. But we must leave further comments on this part of our subject to the political economist.

Now and then a glimmer of light penetrated the darkness of the brethren's minds, showing them that their baneful policy was undermining the foundations of their burghal prosperity ('ad dampnum tam Communitatis ipsius quam tocius patrie adiacentis') [1],—that the stranger merchant would no longer submit to their impositions, and refused to come to the town. Then a liberal ordinance would be enacted, to entice him to trade with them again [2]; but the spasm of reform would not last long, 'vacat' soon appearing in the margin of the Gild records opposite the new regulation [3]. Enlightened rulers like Edward I and Edward III duly appreciated the evil, but tried in vain to eradicate it [4].

Among the silent but great revolutions of English municipal history, the story of which has never yet been adequately recorded, is the wide-spread decay of once powerful boroughs in the fifteenth and sixteenth centuries [5]. 'Many and the

[1] Vol. ii. p. 155.

[2] Vol. ii. pp. 139, 155, 156, 261, 262.

[3] Vol. ii. p. 262.

[4] Vol. ii. p. 232; Statutes of the Realm, i. 270, 315, 337; ii. 6–8; cf. Rot. Parl., ii. 332; Rymer, Foedera, ii. 747.

[5] For some discussions and materials relating to the subject, see Schanz, England's wirthsch. Entw., i. 464–471; von Ochenkowski, 128–130; Pauli, Drei volksw. Denksch., 3, 9, 13, 31, 46, 54, 55; Cunningham, English Industry, 271–275; Rogers, Six Centuries, ii. 339, and Hist. of Agric., iv. 106–109; Froude, Hist. of Eng., i. 8, 9; Eden, State of Poor, i. 109; Nasse, Feldgemeinschaft, 66; Brodie, Const. Hist., i. 26; Rep. MSS. Com., 1881, pp. 359, 431; 1883, p. 174; 1887, App. iii., p. 45; Hedges, Wallingford, ii. 47; Materials

most partie of all the Cities, Bouroughes, and Townes corporate wythin this realme,' says the Statute of 3 Henry VIII, c. 8, 'be fallen in ruyn and decaye.'

> 'The grete mysorder of everi cytee
> Cawsythe gret derth & povertee.
> . . . . . .
> & Englishe hand craft gothe to nowght.
> Halff this Realme, it is vnwrowght!
> Alas, for pure pytty!'
>
> FURNIVALL, *Ballads from MSS.*, i. 96, 99.

There can be no doubt that the Gild Merchant was one of the most potent factors that led to this revolution. The tyranny of the gilds, which the public statutes of that period so strongly condemn (see above, p. 36), drove commerce and industry to rural districts and to smaller 'free-trade' towns, such as Birmingham, Manchester, and Leeds, where their natural, spontaneous expansion was not hampered by ancient privileges. Thus the rigid protection of the older chartered boroughs sapped their commercial prosperity, silencing the once busy looms of Norwich and Exeter, and sweeping away the cloth-halls of York and Winchester[1].

for Hist. of Reign of Hen. VII, i. 462, ii. 150, 306, 349; Letters, etc. of Reign of Hen. VIII, ii. 78; Rot. Parl., ii. 85; iii. 447, 620, 640; iv. 53, 425, 444, 469, 487, 502; Addit. MSS., Mus. Brit., 4529, ff. 2, 3; Statutes of the Realm, 3 Hen. VIII, c. 8; 6 Hen. VIII, c. 5; 7 Hen. VIII, c. 1; 26 Hen. VIII, c. 8, 9; 32 Hen. VIII, c. 18, 19; 33 Hen. VIII, c. 1, 6, 36; 35 Hen. VIII, c. 4; Welfitt, Minutes, No. 26: Reliquary, v. 67; Starkey, Engl., cv., *et pass.* See also the following note.

[1] See vol. ii. 52, 155, 281; Statutes of the Realm, 12 Hen. VII, c. 6; 21 Hen. VIII, c. 12; 25 Hen. VIII, c. 18; 27 Hen. VIII, c. 1; 34–35 Hen. VIII, c. 10; 5–6 Edward VI, c. 24; 1–2 Phil. and Mar., c. 7; 2–3 Phil. and Mar., c. 12; 4–5 Phil. and Mar., c. 5; 1 Eliz. c. 14; Picton, Memorials, i. 29; Smiles, Huguenots, 114, 463; Cunningham, Formation of Crafts, 17, 18; Rogers, Six Centuries, ii. 339; Bowring, Trade of Exeter, Devon. Assoc., v. 97; Timmins, Indust. Hist. of Birmingham, 211; Harl. Misc., ix. 147, 148, 172, 186–188; Blomefield, Norf., 213, 221, 262; Rot. Parl., v. 205; Gale, Inquiry, 168. Winchester affords a striking example of the decline of large towns. In a petition to the King in 1450, the citizens state that 'your said citee is desolate of peple . . . it is become right desolate,' and 997 'houses which were wont to be occupied with peple stondene now voide, and . . . xvii. parryshe churches stond inofficiate' (Archaeologia, i. 91; cf. Woodward, Hamp., i. 287; Bailey, Transcripts, 82–86).—Besides the gild restrictions, the other main cause of the downfall of many towns in the fifteenth and sixteenth centuries was the extensive enclosures of farming lands.

CHAPTER IV.

Duties of Gildsmen.

The right to trade freely has been characterised in the preceding chapter as the essence of the Gild Merchant. But to complete the latter conception it is necessary to define the duties of the gildsman. In return for the enjoyment of the privileges of membership, the principal obligation imposed upon him was 'to scot and lot,' or 'to be in scot and lot,' with the burgesses [1].

Some writers divide this expression into two component parts, asserting that 'scot' signified to contribute to assessments—to 'rates and taxes'; while the word 'lot' embraced the active duties of a burgess, especially holding office [2]. This view is certainly untenable for the middle ages [3], though one example of the factitious distinction between 'paying scot' and 'bearing lot' may be found in a document of the eighteenth century [4]. There is abundant evidence in medie-

[1] Vol. ii. pp. 108, 109, 110, 120, 123, 125, 132, 138, 140, 141, 150, 175, 189, 191, 192, 211, 352, 358; Thompson, Leic., 30, 86, 88; Chartae Hibern., 84; Rep. MSS. Com., 1885, App. v., p. 486.

[2] Gneist, Self-government, 582; English Gilds, 345, 346; Merewether and Stephens, pp. v., xiii., 700, 1110; Anstey, Unrepresented Commons, 114, 121; Holloway, Rye, 245, 252; Twiss, Black Book of Admiralty, ii. p. xvi; Gneist, Verf., 125; Blackstone, Com., i. 465.

[3] For some discussions of the etymology and signification of 'scot and lot,' see Douglas, Election Cases, i. 140, iii. 37–54, 59, 75–86, 126–131, iv. 92; Luders, Elections, iii. 123, *et passim*; Skeat, Dict., 532; Jamieson, Dict., iv. 121; Riley, White Book, 114, 235; Liber Albus, 128; Liber Custumarum, 812; Norton, London, 100, 419; Cox, Elections, 165–175; Fry, On the Phrase 'Scot and Lot,' Philol. Soc., Trans., 1867, pp. 167–197; Ducange, Glossary, under the words 'lot' and 'scot.' Fry treats the subject more exhaustively than the others.

[4] Fry, 175; Clifford, Southwark Election Cases, 378, 379.

val records to show that to be in 'scot and lot' meant merely to participate in assessments or pecuniary charges [1]; in other words, the gildsman was expected to render the authorities of the borough assistance, according to his means, whenever they needed money.

Before demonstrating this we must premise what we shall prove in the next chapter, namely, that there were many non-resident stranger merchants in the Gild, as well as some neighbouring abbots, knights, and other men of distinction. This fact alone would lead us to presume that 'scot and lot,' to which they as brethren were subject, had the signification that we have assigned to it; for these persons would not be expected actively to participate in the administration of the town.

Again, the sources frequently emphasise the fact, that the right of trading in the town was wholly conditional on the payment of one's quota of the pecuniary burdens (tallages, aids, etc.) [2]. The words 'tallagia,' 'auxilia,' etc. in these documents are, we may safely surmise, equivalent to 'scot and lot' in

[1] I agree with Mr. Fry who says (p. 168): 'I do not find that the phrase "scot and lot" ever refers to any burdens besides pecuniary ones.' He also rightly calls the notion that 'bearing lot' is something different from 'paying scot,' 'a modern and erroneous interpretation' (p. 179). Riley (White Book, 114) says that the term 'scot and lot' signifies 'all taxes levied rateably for purposes of state; "scot" meaning the money paid, and "lot" the proportion in which the assessment was made,' i.e. its allotment. This distinction is plausible, though difficult to prove. (Cf. Madox's use of the word 'lot' for 'quota' or share in Firma Burgi, 280; also our expression 'part and lot'; and 'lot' as used in auction sales.) From the passages which I shall cite hereafter, we must infer that the term 'scot and lot' was used vaguely to indicate in a general way pecuniary charges of all kinds or, in modern language, all rates and taxes; just as 'gelds,' 'tallages,' 'aids,' etc. came to be employed. A peculiar use of 'lot and scot' will be found in vol. ii. p. 46, where it seems to mean 'to share,' in the sense of the Scotch 'lot and cavil.' See Jamieson, Dict., i. 398; Acta Parl. Scot., i. 435, 437; Ancient Laws of Burghs, 26, 74, 86, 157.

[2] 'Quia in Curia Regis coram Baronibus de Scaccario suo consideratum fuit, quod quicumque velint mercandizare in Civitate sua Norwici cum Civibus ejusdem Civitatis, contribuant cum eisdem in tallagiis et aliis auxiliis, sicut ipsi Cives' (4–5 Edward I; Madox, Firma Burgi, 272). See also ibid., 270–273; Hist. of Exch. i. 725–728; Drake, Eboracum, 205; Rymer, Foedera, i. 41; Rot. Parl., i. 168; Izacke, Exeter, 12; Poulson, Beverlac, i. 111; Chartae Hiberniae, 63; Abbrev. Placitorum, 174; Blomefield, Norf., iii. 62; Ryley, Placita, 259. See also vol. ii. pp. 274, 378.

others; expressing in both cases the corresponding obligation for the exercise of one and the same privilege. This interchange of the phrase 'scot and lot' with some other denoting money contributions is also found in different records of the same town where there can be no doubt as to their synonymous use. For example, at Neath we meet with the words 'giveing and yeeldinge according to the Charter'; but the expression in the charter is 'lotans et scotans[1].' Other phrases, such as 'in gilda, lotto et scotto,' 'ad gildas et consuetudines et assisas,' 'in lotto et scotto et in assisis et tallagiis,' 'in gilda et ad omnes consuetudines,' 'ad geldam et scottum,' 'in tallagiis et aliis auxiliis,' etc., occur in connection with the privilege of trading, all doubtless indicating the same general idea as 'scot and lot[2].'

Moreover, the context in many passages plainly reveals the general signification of the term 'scot and lot.' For example, in such combinations as 'lottans et scottans ad communia talliagia ville[3]' and 'lot et scot ad communia auxilia regis[4]' the reference can only be to payments. At Hastings persons on becoming freemen swore 'to scot and lot if there should be any taxes for the common good[5]'; at Pevensey the freeman's oath contained the words 'I will lot and scot with my goods and chattels to the community, in the quantity that I shall be assessed, according to my power[6].'

[1] Vol. ii. pp. 175, 176. 'Give and yealde with my mayor and my neighbours after my savinge' also occurs in the oath of the Chester freemen (Ormerod, Cheshire, i. 219); and 'geve and yelde as other fremen doth,' in that of Waterford (Rep. MSS. Com., 1885, App. v., p. 285). In the same connection in the oaths of other towns we often find 'scot and lot.' See below, notes 5, 6. We also meet with 'scotte and lotte, yeve and yeld' in English Gilds, 329.

[2] Vol. ii. 108, 146, 191, 192, 211, 378. In a petition to the King from the men of Hull in 26 Edward I, 'lot et escot' occurs; in the corresponding clause of the charter granted in answer to this petition we find 'ad geldam et scottum' (Madox, Firmi Burgi, 272, 273, and Hist. of Exch., i. 424). See also Rep. MSS. Com., 1885, App. v., pp. 438, 486.

[3] Vol. ii. p. 125; Wodderspoon, Ipswich, 159; Ipswich Archives, Little Domesday, fol. 90 b (temp. Edw. I).

[4] Addit. MSS., Mus. Brit., 25334, fol. 32.

[5] 'Ad scottandum et lottandum si quae taxata pro communi utilitate fuerint' (State Trials, xvii. 850).

[6] 'Et seray lottant et escottant de

But there is even more positive evidence in support of my position. In 1281 the burgesses of Leicester and the men belonging to the neighbouring fee of the bishop of Lincoln entered into an agreement, according to which all worthy tenants of the bishop's fee were allowed to enter the Gild Merchant of Leicester, and 'to enjoy all the franchises and free customs belonging to that Gild within the town, without, and everywhere. And for this the aforesaid tenants of the bishop grant that in the future they will be in scot and lot with the aforesaid burgesses in all things belonging to the Gild, according to their assessment.' Then are specified the occasions when they are to assist the burgesses, namely, when, during the visits of the king, or queen, or the lord of the town, or the king's ministers, a present was given to these personages to maintain the franchises of the Gild; also when royal fines were imposed upon the borough[1]. In this, as in some other muniments, 'scot' and 'scot and lot' are employed as synonyms[2]. In the oath of the Leicester Gild 'scot' alone is likewise mentioned as the main obligation of the brethren[3]. So, too, 'lot' is sometimes used interchangeably with 'scot and lot[4].'

mes biens et chatels a la comunite, a la quantite qe serat assis, sulon mon poer' (Sussex Archæol. Soc., Collections, 1851, iv. 214. A.D. 1356). For other examples, where the context shows that we have only to do with 'paying,' see vol. ii. pp. 16, 48, 80, 110, 352; Ryley, Placita, 414; Lyon, Dover, ii. 306, 307, 354; Boys, Sandwich, 440; Twisden, Scriptores, 2140; Liber Albus, 128, 269, 391; Simpson, Lancaster, 282; Green, Worcester, App. xcviii.; Archæol. Assoc., Journal, vol. 24. p. 329; Bacon, Annalls, 254–256, 299; Bracton's Note-Book, § 1640; Madox, Firma Burgi, 28; Cromwell, Colch., 254, 257. Cf. also the continental use of the words, 'scot ende lot ghelden,' etc. (Höhlbaum, Urkundenbuch, iii. 246.)

[1] Vol. ii. pp. 140, 141. For a translation of this document, see Gentleman's Magaz., 1851, vol. 35. pp. 598–599; Thompson, Munic. Hist., 68–70.

[2] In a royal grant to Norwich of 13 Henry III 'scot' alone is mentioned; in that of 40 Henry III in a similar connection, 'scot et lot' (Blomefield, Norfolk, iii. 43, 51).

[3] Vol. ii. p. 138.

[4] Vol. ii. p. 125. A document given by Madox (Firma Burgi, 270; Hist. of Exch., i. 410) has the words 'Carta regis, quod nullus emat infra Burgum de Salopesbiria Coria recentia vel Pannum crudum, nisi sit in Lotto et assideatur et taillietur cum eisdem Burgensibus.' But the charter has 'lotto et scotto,' etc. (vol. ii. p. 211). Cf. Fry, 172; Ducange, under 'lot'; Spelman, Gloss., 'lot.' See also p. 55, note 2, and Madox, Firma Burgi, 251, for 'lot' = 'geldum.'

As at Leicester so at Ipswich and Totnes we meet with persons in the Gild whose obligations are stated to be limited to money contributions[1].

Thus the pre-eminent duty of the gildsman was to be in 'geld' ('ad geldam') with the burgesses; or, as an old record well expresses it, 'reddere debet simul cum burgensibus talliagia, et defectus burgi adimplere[2].' In the thirteenth and fourteenth centuries, even more than at the present day, money was to be found in greatest abundance among those engaged in trade. Upon them the municipal authorities depended when called upon to raise a large sum of money. Such emergencies were by no means rare. The king tallaged his boroughs whenever he pleased. 'Our goods and chattels,' said a jury of the townsmen of Hereford, 'are to be taken and taxed at his pleasure, saving unto ourselves a competent quantity for our sustentation and the tuition of our city[3].' Then, too, the 'firma burgi' had to be paid into the royal Exchequer. 'The very existence of their corporation,' Madox rightly observes, 'depended upon the payment of their yearly ferme reserved to the crown in their charter[4].' If the burgesses could not pay the tallages and ferms demanded by the king, their dearly-bought and highly-prized charters were of little avail to safeguard their franchises; the latter being mercilessly confiscated, unless rescued by the purse of the merchant[5]. It was well for the borough, in emergencies like this, that there were gildsmen without as well as within the borough who could be called upon to render assistance.

'The Old Usages of the City of Winchester' describe how the Gild Merchant of that town was wont to make its collections.

[1] Vol. ii. pp. 123–125, 235.

[2] Rymer, Foedera, i. 41.

[3] Archæol. Assoc., Journal, xxvii. 471; Johnson, Customs of Hereford, 25.

[4] Madox, Collections, Addit. MSS., Mus. Brit., 4530, fol. 95.

[5] Madox, Firma Burgi, 161, 175; Hist. of Exch., ii. 244–247; Davies, Southampton, 37; Drake, Eboracum, p. lxii. I can find no evidence to show that the Gild Merchant as such undertook the payment of the 'firma burgi,' as Gneist and other writers affirm. See Gneist, Gesch. des Self-gov., 105, 110; Verwaltungsrecht, i. 134; Verfassungsgesch., 124; Stubbs, Const. Hist., i. 467, 473; Davies, Southamp., 32; Hunt, Bristol, 56.

'To drink the Gild Merchant' ('bevere gilde markande'—'potare gildam mercatoriam') meant, in Winchester, simply to hold a meeting of the fraternity for the purpose of assessing the merchants ('gadere þat ryȝte of chepmen'—'a requiller en gilde markande'). Fit men of good repute were chosen, and distributed in four different houses. After the business had been transacted, or, as the citizens expressed it, 'after they had drunk the gild merchant' ('kant len avera beu gilde markande'), the men chosen to superintend the work in the four houses came together to ascertain how much had been collected. They were to see that each house contributed its share; for if one house was worth more than another, it was to be charged according to its value. The money thus levied was to be handed over to the six collectors of tallage, who were bound to render account twice a year to the civic authorities[1]. This same peculiar expression 'to drink the Gild,' pointing to the prominence of the convivial element at these meetings, was also employed in Germany[2]. It was doubtless found that 'spyce cake, good bere and ale' helped to loosen the purse-strings of the brethren.

There were periodical Gild collections in other towns besides Winchester; but we are not informed how they were made[3]. The wording of some borough charters ('they may make the Gild among themselves, for their profit, whensoever they desire')[4] suggests the inference that the privilege conveyed by these grants was simply the right to hold such meetings

[1] Vol. ii. pp. 254–256.

[2] Goetze, Gesch. der Stadt Stendal, 105: 'celebrata fuit gulda et perfortiter bibita.' Cf. Höhlbaum, Urkundenbuch, iii. 552.

[3] Vol. ii. pp. 96, 211, 212, 245, 275, 332. From the language of an entry in the Andover rolls, 'Summa totalis omnium denariorum perceptorum de potacione predicta' (ii. 332), it is evident that drinking and feasting accompanied the collection at Andover, as at Winchester. This was also probably the case at Guildford (ii. 96). The payments called 'gild groats,' 'scot pennies,' 'chep-gavell,' 'gilde silver,' 'hans pennies,' 'sige pennies,' etc., were probably collected from gildsmen (vol. ii. pp. 1, 13, 14, 109, 236, 328, 335); but some of these may be impositions upon non-gildsmen for permission to trade. Cf. also vol. ii. pp. 32–34, 203, 208 ('hansing-silver,' 'cheping-gavel').

[4] Vol. ii. pp. 132, 150, 175. 189, 358.

for the purpose of assessing, or imposing 'gelds' upon, those participating in the mercantile franchises, and further suggests the possibility that in some towns this immunity may have been enforced by the ordinary machinery of town administration, without the aid of a formal brotherhood established for that specific purpose. A similar construction may be placed upon the clause of town charters concerning villeins, spoken of above on p. 8, to be 'in gilda et hansa, lot et scot' being regarded merely as a tautological expression for 'in scot and lot[1].'

[1] In a charter of Henry II to Lincoln the corresponding words of a similar clause reads: 'si aliquis manserit . . . et dederit consuetudines' (Rymer, Foedera, i. 40). In a charter of King John to Hereford we find 'in gilda et hansa, lot et scot'; but in another Hereford record 'scot and lot' occurs to indicate the same thing (Rot. Chart., 212; Archæol. Assoc., Journal, vol. 27. pp. 480, 481). In Appendix C it will be shown that 'hanse,' like both scot and lot, often meant a payment, tax, or assessment. As for 'gild,' its use in this sense was very common. In 41 Henry III we hear of men 'qui Geldabiles sunt in Burgo Warwici' helping the burgesses pay a fine of forty marks (Madox, Firma Burgi, 271; see also Plac. de quo War., 251). In 1328 the 'comyn geldys' gathered by the bailiffs of the town of Preston are spoken of (Abram, Memorials, 8; see also Dobson and Harland, 22). Such expressions as 'to be *ad geldam*,' 'to be gildable and contributory,' 'to give and geld (or yield),' 'geld and pay,' were often used in boroughs. See above pp. 55; Gribble, Barnstaple, ii. 252; Izacke, Exeter, 59; Noake, Worc., 18; Spelman, Gloss., 'geldum'; Abbrev. Placit., 174. Cf. also Rot. Chart., 38; Chartae Hibern., 75; Rymer, Foedera, i. 4; Merewether and Stephens, 294, 350, 353, 523, 599, 786, etc.; Palmer's Manship, 243; Memorials of Ripon, i. 35, 91; Memorials of Fountains, ii. 17; Larking, Domesday of Kent, App. xxiv.; Rot. Parl., v. 220; Madox, Firma Burgi, 270–273. The frequent use of 'geld' and 'scot' in Domesday Book is well known: 'Ipsi quoque burgenses habebant de rege xxxiii. acras terrae in gildam suam' (i. 2); 'reddidit aliquid consuetudinis vel scoti' (ibid.); 'commune geldum' (i. 30); 'in geldo civitatis sunt . . . terrae, et unaquaeque geldabit (i. 298)'; 'mansiones . . . in burgo que . . . scottabant ad geltum regis' (ii. 290); see also Domesday, i. 3, 11, *et passim*.—The word 'geldabiles' mentioned in the first part of this note is not to be confounded with 'the geldable' in the technical sense of the term, meaning unfranchised parts of the county (the 'corpus comitatus') that were directly subject to the jurisdiction of the sheriff, and whose rents and taxes were levied by the latter. See Madox, Firma Burgi, 81–83, 100, 101; Rot. Parl., ii. 249; Cowel, Interpreter, 'gildable'; Statutes of the Realm, 27 Edw. III, st. 2, c. 13; 11 Hen. VII, c. 9; 27 Hen. VIII, c. 26; Coke, Reports, Pt. viii. p. 125; Placita de quo War., 1, 180, 217, 221, 407, 408; Eyton, Shrop., iv. 150, xi. 198.

'Scotenos' in the Irish town charters (vol. ii. pp. 134, 250) doubtless means 'persons in scot and lot,' the right of the burgesses to impose taxes upon those admitted to their mercantile privileges being accentuated by the use of this word.

On the other hand, the prominence of the same idea of collecting money in places where we know that the formal fraternal organization existed, coupled with the use of such words as 'ad geldas,' 'in gilda,' etc., to express this idea, confirms the view of those who hold that gild, a fraternity, is derived from the Anglo-Saxon 'gild,' a payment, a contribution to a common fund[1].

[1] Skeat, Dict., 248. 'Et est assauoir que "guildan" est un Saxon parol et signifie soluere, id est, que touts de tiel fraternitie serra subjects a paier scot et lot' (Coke, Reports, Pt. viii. 125).

CHAPTER V.

Distinction between Gild and Borough, Gildsmen and Burgesses.

The relation of the Gild to the borough community at large is an important question, which we must discuss with some minuteness, because the vagueness and diversity of this relationship in different periods of time render it difficult to ascertain the exact truth, and because the prevailing views on this subject are, in great part, erroneous.

Merewether and Stephens, among others, hold that the Gild Merchant was merely an ordinary mercantile association, devoid of all public administrative functions[1]. But the preceding chapters prove conclusively that already in the twelfth and thirteenth centuries this fraternity was an official civic body, an organic and constituent part of the municipal government. Diametrically opposed to the doctrine of Merewether and Stephens is that of many historians who consider the Gild identical with the borough constitution as a whole; they maintain, in the words of Thompson, that the former 'was not a mere adjunct of a town community,' that, 'in fact, the whole area of municipal government was occupied by the Gild Merchant,' the head of the borough and that of the Gild being identical, and 'burgess' tantamount to 'gildsman[2].' It is the main purpose of this chapter to show that these writers

[1] See above, p. 37, note 1.

[2] See above, p. 37, note 2; vol. ii. p. 142; Thompson, Leic., 60, 68; Stubbs, Const. Hist., i. 475; iii. 453; Taswell-Langmead, Const. Hist., 20. Thompson also speaks of 'the presence of the Merchant Guild, as the sole municipal body known to the inhabitants,' in every borough of ancient origin (Munic. History, p. xi.).

are guilty of the error of confusing the whole with a part. We shall consider the subject from two different points of view: the relation of the Gild administration to that of the town, and the relation of the gildship to burgess-ship.

The Ipswich records of the time of King John clearly demonstrate that the Gild Merchant was a distinct portion of the general administration of the borough, having certain circumscribed functions of its own. The twelve portmen (i. e. the two bailiffs, four coroners, and six others) were elected and sworn 'to take charge of, and to govern' the town, to maintain its franchises, and to administer justice. But these officials are manifestly distinct from those of the Gild, the alderman and his four colleagues. The laws of the borough and the statutes of the Gild are distinguished with equal clearness; they were to be entered in separate rolls for the guidance of the bailiffs and alderman respectively. To add to the importance of this document, it is expressly recorded that the Gild Merchant was organized at Ipswich in the same way as in other cities and boroughs where such a society existed [1].

There is an abundance of evidence to confirm this assertion. As at Ipswich so at Southampton, the bailiffs of the town and the alderman of the Gild had separate rolls: and the functions of the former are often distinguished from those of the latter [2]. At Chester there were evidently distinct purses for town and Gild; for certain burghal tolls were retained by the former, while others were set apart to sustain the latter [3]. At Derby also there were apparently two separate treasuries [4]; and the records of Southampton refer to both 'le tresor de la gilde' and 'le tresor de la ville' [5]. In 1293 the alderman and

[1] See above, pp. 23–26, and vol. ii. pp. 116–123.

[2] Vol. ii. pp. 216–225, §§ 8, 27, 29, 32, 34, 44, 45, 54; see also ii. 231, 232. According to § 53 the alderman is head of 'the town and of the Guild,' and is to maintain the 'freedom and statutes of the Gild and of the town.' This clearly marks a later stage of development; traces of the old dual administration are visible throughout these Southampton ordinances.

[3] Vol. ii. pp. 43, 44.

[4] Vol. ii. pp. 51, 53.

[5] Vol. ii. pp. 216, 222.

brethren of the Gild Merchant of Lynn lent money to 'the mayor and commune' of the borough; and in 1309 the statutes of the Gilds 'and *also* those of the community' of Lynn are mentioned, the context indicating that the Gild Merchant was included in the former [1]. A charter of Henry II orders the provost of Wallingford not to interfere with the duties of the alderman of the Gild merchant [2]. In a Bridgwater deed the bailiff of the commonalty is distinguished from the bailiffs of the Gild [3]. As at Ipswich, Southampton, Lynn, Wallingford, and Bridgwater, so at Barnstaple [4], Bristol [5], Bury St. Edmund's [6], Chester [7], Leicester [8], Lincoln [9], Oxford [10], Totnes [11], Wycombe [12], and York [13], there were distinct officials for town and Gild—the bailiffs, provost, reeve, or mayor, on the one hand, and the alderman [14], stewards, etc., on the other. All the evidence at our disposal points to the conclusion that the Gild Merchant of the twelfth and thirteenth centuries was not a body in which the general local government was centred—that it was a very important, but only a subsidiary part of the municipal administrative machinery, subordinated to the chief borough magistrates, though far more autonomous than any department of the town government of to-day.

[1] Vol. ii. pp. 153, 155. See also vol. ii. pp. 151, 158, 167. The alderman of the Gild was *ex-officio* an elector of the mayor of Lynn, and occupied the latter's place in cases of death or absence from the town (vol. ii. pp. 151, 158).

[2] Vol. ii. p. 244. Cf. also vol. ii. p. 246; Hedges, Wallingford, i. 365.

[3] Vol. ii. p. 23.

[4] Vol. ii. pp. 13, 14.

[5] Vol. ii. p. 25; Rot. Lit. Claus., ii. 204, 205.

[6] Vol. ii. pp. 30, 33.

[7] Vol. ii. p. 43.

[8] According to Thompson, the alderman of the Gild of Leicester assumed the title of mayor in 1250 (Hist. of Leic., 68). If this is true, then the dual system of officers for town and Gild must have previously existed in Leicester. For the mayor of Leicester is mentioned in a charter of 1219 (Thompson, Leic., 59); also in 1248 (Rep. MSS. Com., 1881, pp. 405, 421). In this same period, anterior to 1250, we often meet with an alderman of the Gild of Leicester (Thompson, Leic., 60, 68; Rep. MSS. Com., 1881, p. 405).

[9] Vol. ii. p. 147; Abbrev. Placitorum, 65; Rot. Lit. Claus., i. 123.

[10] Vol. ii. p. 192; Rymer, Foedera, i. 323; Rot. Lit. Claus., i. 195, 196.

[11] Vol. ii. pp. 237–239.

[12] Vol. ii. p. 277.

[13] Vol. ii. p. 279; Drake, Eboracum, 183; Rot. Lit. Claus., i. 151.

[14] The alderman of the Gild is not to be confounded with the aldermen of the wards of a borough. See below, p. 78.

The general limits within which the fraternity exercised its authority have already been defined. It concerned itself mainly with the regulation of trade; its enactments for that purpose formed the chief element of the Gild statutes. But in the thirteenth century trade was not yet the dominant power in town life that it afterwards came to be. The general laws of the burghal community emanated from the burghmotes or assemblies (Court Leet, Burghmote, Portmote, etc.)[1]; and in these motes the chief officials of the town, the bailiffs, provost, or mayor, were elected[2]. The municipal police and judiciary — which also centered in the burghmotes — were controlled by these functionaries and their associates, who constituted the governing body of the town[3]. Even in

[1] Jacob, Faversham, 71; Welfitt, Minutes, No. 19; Brent, Canterbury, 75, 148; Woodward, Hampshire, i. 278; Holloway, Rye, 184; Waylen, Marlborough, 94; Drake, Eboracum, 198; Rep. MSS. Com., 1883, App. i., p. 170; 1885, App. v., p. 292, etc.; Norton, Comment., 74; Picton, Selections, 75; Archæol. Journal, ix. 82. The Black Book of Winchester (ff. 5–9, etc.) has many entries, *temp.* Rich. II, Hen. IV, etc., recording town ordinances made at the burghmote. They are headed: 'Ad Burghmotum tentum . . . Ordinatum fuit,' etc. Cf. also vol. ii. pp. 110, 117, 127.

Stubbs (Const. Hist., iii. 610) says the portmote 'seems to be the proper name of the court of the guild.' I have met with this term frequently, but never in close connection with the Gild. See vol. ii. pp. 30, 44, 142; Thompson, Munic. Hist., 100; Rep. MSS. Com., 1881, p. 371; Ingham, Altrincham, 71; Ormerod, Chesh., i. 489, iii. 790; Harland, Mamec., 193, 200, 287, 622; Wodderspoon, Ipsw., 267; Black Book of Admiralty, ii. pp. lxxv., 21, 22; Hedges, Wallingford, i. 366; Munic. Corp. Com., 1835, pp. 2702–3. Stubbs, however, states the facts correctly in Const. Hist., i. 483, iii. 627, 628.

[2] Sydenham, Poole, 169; Morant, Colch., i. 94; Harland, Court Leet Records, 51, 146; Simpson, Lanc., 276; Holloway, Rye, 184; Rep. MSS. Com., 1883, p. 170; Gneist, Verf., 313; Archæol. Journal, ix. 70; Woodward, Hampsh., 278; Welfitt, No. 36.

[3] Vol. ii. pp. 43, 44, 116–122, 214–232; Harland, Mamec., 190–194; Baines, Lanc. and Chesh., i. 642–644; Archæol. Assoc., Journal, vol. 27, pp. 462, 464, 465; von Ochenkowski, 82; Stubbs, Const. Hist., i. 475; Rymer, Foedera, i. 323; Archæol. Journal, ix. 70. Their functions also included the police of the market, the maintenance of the various assizes (of bread and ale, weights and measures), etc. See Statutes of Realm, i. 201–205; Engl. Gilds, 366, 367; Portmote Rolls of Worth, Rec. Office, Exch. Misc., Treasury of Receipts, 29/35; Harland, Court Leet Records, 14, and Mamec., 287; Nottingham Records, i. 200, 270, etc.; Rep. MSS. Com., 1876, pp. 556, 557; 1877, pp. 573–576; Merew. and Stephens, 930; Simpson, Lanc., 278. They also had charge of the Piepowder Court: Black Book of Adm., ii. 22; Francis, Swansea Charters, 11; Archaeologia, vol. 48, p. 439; Statutes of the Realm, 17 Edw. IV, c. 2; 1 Rich. III, c. 6; Hedges, Wallingf., i. 380; Birch, Char-

Leicester, where the Gild was more paramount than in most boroughs, 'the enforcement of civil and criminal law,' as Thompson himself informs us, was not one of its appurtenances [1]. The judicial authority of the Gild Merchant was at first doubtless very limited, its officers forming a tribunal of arbitration, at which the brethren were expected to appear before carrying their quarrels into the ordinary courts [2]. The functions of these officers were inquisitorial rather than judicial. But, in some places, their powers appear to have been gradually enlarged during the thirteenth century so as to embrace jurisdiction in pleas relating to trade [3].

If Gild administration and borough administration, Gild laws and borough laws, Gild officers and borough officers respectively, were distinct conceptions, we should naturally surmise the same of Gild community and borough community, gildsmen and burgesses, gildship and burgess-ship [4]. But the

ters of London, 55, 82, 83, 118; Records of Nottingham, i. p. ix.; Cartul. de Whiteby, ii. 423; Antiq. Sarisb., 268; Liber Albus, xcv., 67; Liber Custum., xlvi.; Francis, Neath Charters; Rep. MSS. Com., 1876, p. 577; 1885, App. v., pp. 287, 335; 1887, App. iii. p. 8; Rot. Parl., vi. 187, 263; Cutts, Colch., 161.

[1] Munic. Hist., pp. ix., 36, 100; Gentleman's Magazine, 1851, vol. 35, p. 263. The same is true of Ipswich, Southampton, and Andover (vol. ii. pp. 116–118, 220, 223, §§ 32, 44, and pp. 341–343). If the bailiff of the town of Southampton does not render justice to inhabitants or strangers, 'in consequence of which complaint arises, or the thing becomes publicly known without a complaint, the alderman shall assemble the steward, the skevins, and the jurats of the town, and cause such trespass to be amended, and render justice in default of the bailiff' (vol. ii. p. 225, § 54). At Worcester, even as late as 1466, the 'yeld' and the 'lawday' (court leet) were distinct (vol. ii. p. 273).

[2] Vol. ii. pp. 278, 308; see also ii. 65, 154, 164, 315; Statutes of the Realm, 19 Hen. VII, c. 7. For this usage in other gilds of England, see Harwood, Lichf., 321; Wilts. Arch. and Nat. Hist. Magazine, iv. 166; English Gilds, 21, 55, 96, 159, 268, 318, 450; Antiq. Magaz., vi. 72; Rep. MSS. Com., 1883, p. 295; Tate, Alnw., ii. 329; for the same custom on the continent, see Wilda, Gildenwesen, 137.

[3] Vol. ii. pp. 23, 24, 33, 34, 138, 143, 144, 202, 237, 242, 290-336. In his Treatise of Burghs, p. 20, Brady has the words: 'Aldermannus Gildae Mercatorum Oxoniae, Judex Gildae Oxoniensis, Qui Mercatorum lites dijudicabat. Monast. Angl. Tom. 2. f. 141.' In the Monasticon (edit. 1661, ii. 141) the alderman of the Oxford Gild is mentioned, but the words 'Judex . . . dijudicabat' seem to be a figment of Brady's brain, in harmony with his other perversions of original records.

[4] Thompson (Munic. Hist., 15, 53, 99, 103, 143) thinks otherwise.

non-identity of the latter can be proved by independent evidence.

In the first place, certain general considerations afford a strong presumption in favour of this view. If members of the Gild Merchant and burgesses were synonymous terms, we should expect to find merchants ('mercatores') frequently used for 'burgenses,' but this is very rarely, if ever, the case. Women, monks, and heads of religious houses belonged to the Gild [1], but they were excluded from burgess-ship; for they could fulfil the obligations of the one, but not of the other [2].

If we subject our materials to a closer scrutiny, we may, with confidence, enunciate three propositions. First, there can be no doubt that the gildship was enjoyed by many persons living at a distance, in the neighbourhood of the town, or in privileged sokes within the latter, who were not burgesses; they were privileged 'foranei,' 'forinseci,' 'extranei,' 'extrinseci,' 'estraunges,' etc., as distinguished from the 'burgenses intrinseci,' 'denzeins,' etc. [3] At Totnes, as we have already remarked, the Gild was defined as an institution by which merchant strangers ('extranei') were made free of toll [4]. The lists of gildsmen in this and other places include many persons apparently living in neighbouring, or even distant, towns [5]. In

[1] See above, p. 30, n. 1, and vol. ii. p. 235. For monks engaged in trade, see Rot. Parl., i. 27, 156; Monast. Angl., iv. 52. Höhlbaum, Urkundenbuch, iii. 407, 408, 586, gives a long list of the abbeys of Great Britain in the thirteenth century and the annual value of the wool which each produced.

[2] Ritson, Jurisd. of Court Leet, p. ix.; Merew. and Stephens, 80.

[3] Merewether and Stephens deny that, anterior to the reign of Elizabeth, the non-resident stranger could partake of any municipal privileges by means of the Gild or through any other agency (Hist. of Boroughs, pp. xiii., xxxvii., lxi., lxii., 1244–5); but here, as in many other cases, the evidence against them is not merely overwhelming, but it seems almost impossible for them not to have been acquainted with much of it. Apart from the examples of privileged 'forinseci' given in this chapter, see vol. ii. pp. 14, 198; Black Book of Admiralty, ii. 152, 170–172, 178; English Gilds, 390, 392; Baines, Lanc. and Chesh., i. 674; Morant, Colch., i. 98; Simpson, Lanc., 282. See also vol. ii. pp. 127, 190, 196, 274.

[4] Vol. ii. p. 236; cf. ii. 237.

[5] Vol. ii. pp. 14, 60, 137, 196, 197, 210–212, 239, 246, 289–341; Thompson, Leic., 53, 54. These lists afford further confirmation of our proposition, in that the number of gild-brethren therein entered seems to be too large to square with the number of burgesses in medieval English towns, or the

the Gild rolls of Shrewsbury, the names of the 'forinseci' are entered in a group separate from those of the burgesses[1]; in like manner, at Barnstaple, the 'forinseci' are distinguished from the 'intrinseci[2].' At Lynn, strangers ('extranei') were made free of tolls through the agency of the Gild[3]. At Derby also there were 'forinseci' in the fraternity[4]. At Wallingford there were 'conventionarii forinseci,' so called, doubtless, because they paid a yearly composition for the right to trade freely as gildsmen[5]. Heads of religious houses in Ipswich and many knights living in the neighbourhood are mentioned among the 'forinseci' of that town; they entered the Gild in order that they and their servants might be exempt from paying toll in the borough[6]. Henry II granted the citizens of Lincoln 'their Gild Merchant consisting of men of the city and other merchants of the county[7].' The Southampton ordinances speak of persons 'not resident in the town admitted into the Gild by the favour of the approved men of the town[8].' In 1236 the abbot and monks of Buckfastleigh were admitted into the Gild of Totnes, so that they might make their purchases freely, paying yearly to the fraternity 22*d.* for all tallages[9]. Many similar conventions between burgesses and religious bodies were entered into, but frequently without expressly mentioning the Gild[10].

general population of the latter. See below, p. 73, n. 4. It is probable that many merchants belonged to the Gild of more than one borough (vol. ii. pp. 5, 154, 241), just as in later times a person could be a burgess of more than one town (Merewether and Stephens, 2080).

[1] Vol. ii. pp. 211, 212. 'Homines de praedicto hundredo qui sunt in lot et scot cum praedictis burgensibus nostris infra burgum et extra' are mentioned in a charter granted by King John to Shrewsbury (Rotuli Chart., 142).

[2] Vol. ii. p. 13.

[3] Vol. ii. p. 158; see also vol. ii. p. 154.

[4] Vol. ii. p. 52. '... de aliquo forinseco, nisi tantum de illis qui sunt de gilda predicta.'

[5] Vol. ii. p. 246.

[6] Vol. ii. pp. 123–125, 376, 377. It is plain that they were in the Gild and not burgesses in the strict sense of the term; and yet they are called 'burgenses.' This expression was probably sometimes used broadly to designate all participating in any privileges of the borough; it was occasionally even applied to all living in the borough (see Liber Albus, 61). In a similar manner, we now use the words 'citizens,' etc. in a broad and in a narrow sense.

[7] Vol. ii. p. 146.

[8] Vol. ii. p. 226.

[9] Vol. ii. p. 235.

[10] See above p. 54, n. 2; and Madox, Firma Burgi, 270–272.

Other passages clearly show that such 'foreigners' of the Gild did not belong to the burghal community, that they were not burgesses in the strict sense of the term. In 1281 an agreement was made between the burgesses of Leicester and the tenants of the bishop of Lincoln living outside the east gate of Leicester. The latter were allowed to enter the Gild, but it is certain that they did not thereby become burgesses; for the burghal community and the Gild community are unequivocally contrasted. 'Nor is it to be understood that the tenants of the bishop shall pay scot in this manner for amerciaments or fines that touch the community of the town and not the community of the Gild[1].' The tenants of the bishop of Winchester were free to buy and sell in that city like other members of the Gild, but they were not burgesses[2]. A jury of the citizens of Hereford asserted that the tenants of certain lords dwelling outside the suburbs of the town 'might be of us and be taxed with us,' and 'be free of toll amongst us,' and were to be protected 'before other forreyners,' but 'these persons shall not come into our councell,' and 'ought not to be called cittizens, nor to be accompted our fellow cittizens[3].' They were evidently gildsmen, but not burgesses[4].

These 'foranei' or 'forinseci' of English boroughs are not to be confounded with the out-burghers ('Ausbürger') of German towns. The former were, in great part, merchants, who aimed to secure freedom of trade or participation in commercial immunities; the 'Ausbürger' were, in great part, wholly disconnected with trade, and sought protection against the violence of turbulent barons[5].

Secondly, a person could be a burgess without belonging to

[1] Vol. ii. p. 140, 141; cf. also ii. 142, 192.

[2] Vol. ii. p. 254.

[3] Duncumb, Hereford, i. 343, 344; Archæol. Assoc., Journal, xxvii. 480; cf. vol. ii. pp. 109, 110.

[4] In the cases of Gainsborough, Reading, and Andover (vol. ii. pp. 91, 203, 333) it is not clear whether the 'forinseci' referred to were non-resident, or strangers who came to reside in the town.

[5] Von Maurer, Städteverf., ii. 241–251; Heusler, Basel, 262; Warnkönig, Fland., i. 354.

the Gild. At Ipswich, in the time of King John, a burgess, if a merchant, was to be free of toll only on certain conditions. These, as the context shows, were that he should enter the Gild, performing the duties of a gildsman[1]. 'If anyone trespass,' says one of the Southampton statutes, 'who is not of the Gild and is of the franchise, or do any violence unto a gildein, and is duly convicted thereof, he shall lose his franchise, and go to prison for a year and a day[2].' At Bedford, 'as well burgesses as others' were admitted into the fraternity[3]. The Preston Gild ordinances of 1328 speak of 'all manner of burges the which is made burges be court roll and oute of the Gyld Marchand[4].' In 1198 certain persons dwelling in the suburbs of Bury St. Edmund's were allowed to have their names placed on the roll of the town prefect, and to enjoy equal rights with the burgesses; nevertheless, they were not to be free of toll in the market, unless they entered the Gild Merchant[5]. In 1307 certain burgesses of Newcastle-upon-Tyne brought an action in the royal Exchequer against the members of the Gild Merchant, to which the former evidently did not belong[6]. In 1330 there was a complaint that the profits of the Gild of Derby did not redound to the advantage of the 'community of the borough,' but 'only to the advantage of those who belong to the said society[7].' At Lynn, in 1357, a fine was to be imposed for a certain offence. If the culprit was a gild-brother, it was to be paid to the alderman of the Gild; if 'a burgess, and not a brother of the Gild,' to the mayor of the town[8]. At Shrewsbury it seems that the burgesses were accustomed to enter the fraternity for a time, to withdraw from it, and then re-enter[9]. Burgesses not in the mercantile brotherhood were also to be found in Bristol[10], Reading[11], and probably in other towns.

[1] Vol. ii. p. 120.
[2] Vol. ii. p. 217, § 13; see also §§ 30, 65, 69, 75.
[3] Vol. ii. p. 17.
[4] Vol. ii. p. 195.
[5] Vol. ii. pp. 29, 30.
[6] Vol. ii. p. 184. See also the complaint made in 1343, vol. ii. p. 185.
[7] Vol. ii. pp. 52, 53.
[8] Vol. ii. p. 167.
[9] Vol. ii. p. 212.
[10] Seyer, Memoirs of Bristol, i. 508.
[11] Vol. ii. p. 203.

Thirdly, a person could be an inhabitant of a town without being either a burgess or a gildsman. Thus, in the Southampton statutes, those of the Gild, of the franchise, and of the town are distinguished[1]. At Bedford, as well burgesses as other persons, residing in the town, were received into the brotherhood[2]. At Lincoln, during the reign of John, the fullers seem to have stood without the pale of both the Gild Merchant and the burghal community[3]. In the same category would fall many tenants of privileged sokes situated within the limits of the borough[4], many villeins who sought refuge in the towns, and all Jews residing in the latter. The brethren are sometimes contrasted with persons included in some such general expression as 'the other men of the town'[5], the latter doubtless comprehending unprivileged inhabitants as well as burgesses.

The main argument of those who insist upon the complete identity of Gild and burghal community, is the circumstance that the terms burghers ('burgenses') and gildsmen ('homines de gilda' or 'burgenses de gilda'), are both used, in several instances, in one and the same grant of municipal privileges[6]. *Prima facie* this proves the non-identity as much as the identity of the two. But if we examine these charters with care, we shall find that they afford another striking confirmation of our view. For 'homines de gilda' is employed only when the grant refers to immunities which were of special importance to merchants, whose vocation necessitated frequent visits to various towns, but which, on the other hand, would be of less concern to the burgesses at large, especially to those not in the Gild. These immunities were exemption from trial

[1] Vol. ii. pp. 217–230, 232, §§ 18, 19, 45, 53, 65, 69, 75, etc.

[2] Vol. ii. p. 17.

[3] Abbreviatio Placit., 65.

[4] Some of the tenants of St. Mary's Nunnery at Chester seem to have been in the Gild, and others not (vol. ii. p. 45).

[5] Vol. ii. pp. 139, 170, 172, 204; cf. ii. 174.

[6] Vol. ii. pp. 183, 253, 357, 358, 373, 374, 388; cf. also ii. 173, 174, 202, 251, 252, 351. These comprise all the cases that I have met with. Most of these grants are modelled after the charters of Winchester.

in courts outside the borough and, above all, freedom from toll throughout the realm. It is certainly no adventitious circumstance that the expression 'homines de gilda' (or 'burgenses de gilda') is employed almost without exception only in connection with such commercially important privileges, while the wording of the document suddenly changes to the simple 'burgenses' as soon as franchises are mentioned that were of great value to *all* the burgesses [1].

We must, then, hold fast to a distinction between gildship and burgess-ship. The pre-eminent qualification of the former was ability to pay scot and lot; that of the latter, ability to perform active burghal duties, such as to watch and ward, hold office, serve on juries, etc. [2] The burgess was also liable to taxation, but probably to a less extent than the gildsman. The burgess was required to be the owner of a burgage tenement within the town [3]; but the gildsmen were

[1] Compare also the charter of Henry II to the citizens of the *Gild* of Winchester, vol. ii. p. 252, with another granted to the citizens at large by the same monarch (Woodward, Hamps., i. 271); and see vol. ii. pp. 256–258, 390, 391.

[2] Gneist, Self-gov., 582; Merew. and Stephens, p. v.

[3] 'David Tinctor dat domino Regi i. *m.* per sic, quod masuagium suum quod habet in Careolo sit burgagium, et quod ipse habeat easdem libertates quas alii burgenses Carleoli habent' (Rot. de Oblatibus, etc., 2 John, p. 116). 'Si quis Burgensis voluerit fieri, veniat in curia et reddat Prefecto duodecim denarios et capiat Burgagium suum de Pretoribus . . . . Item, Burgensis non potest esse, nisi habeat Burgagium duodecim pedum in fronte' (Brief Desc. of Preston, 21–22). 'Et sunt apud Lanygelays [i.e. Llanidloes] lxvi. burgenses, quorum . . . unusquisque tenet unum burgagium, et solvit per annum xii. denarios' (Powysland Club, Coll., viii. 226. A.D. 1309).

A 'burgage' included a tenement with the land under and around it, the usual rental being 12*d.*; probably the term at first referred primarily to the land, afterwards to the house. We meet with 'burgagium' in both these senses. In modern language, not the householder or mere inhabitant, as some assert (Merewether and Stephens, xii.–xiv., 278, 1873; Cox, Parl. Elections, 169, 171), but the freeholder, was the original burgess, the boroughs constituting territorial communities. In the thirteenth or fourteenth century the personal element (apprenticeship, redemption, inheritance) became the main qualification of burgess-ship in many towns, especially the larger trading centres. A great diversity as regards qualification prevailed in different boroughs from the fourteenth to the nineteenth century. See above p. 6, note 3; Stubbs, Const. Hist., i. 467, iii. 453; Maclean, Bodmin, 106, 107; Seyer, Memoirs, i. 508, 509; Duncumb, Heref., i. 325; Picton, Memorials, i. 10, 25, 26, 35, 68; Tate, Alnwick, ii. 231, 232; Merewether and Stephens, 527, 699;

generally 'non feoffati[1].' The former was compelled to be a resident in the town[2]; but the gild-brother, as we have seen, was not generally subjected to this restriction. The new burgess was admitted in the regular burghal motes or courts[3]; the gildsmen, in the 'morgenspeche.'

Although it is very necessary thus carefully to distinguish between the various constituent ingredients of the medieval town, we must be equally careful not to exaggerate the difference between borough and Gild, whether as regards administration or membership. 'Any complete generalisation upon the constitutional history of the towns,' the Bishop of

Black Bk. of Adm., ii. 152; Record of Caern., 223; Thompson, Munic. Hist., 14; The Antiquary, ix. 161; Madox, Firma Burgi, 21, 39, 273–277; Palgrave, Commonw., i. 629, and Corporative Reform, 41; Boys, Sandw., 522; Ingham, Altrincham, 71; Eyton, Shrop., x. 133; Watkins, Bideford, 12–14; Rep. Record Com., 1837, p. 434; Archæol. Assoc., Journal, vii. 422–427; Records of Chesterf., 33; Jefferson, Cumberl., ii. 24; Stark, Gainsb., 73; Boldon Buke, App. xl.; Gale, Inquiry, App., No. 4; Ormerod, Chesh., i. 488, iii. 790; Paroch. Hist. of Cornw., iii. 175; Fraser, Elections, ii. 82; Munic. Corp. Com., 1835, p. 2858; Harland, Mamec., 200–206, 219, 504–508; Bacon, Annalls, 80.

[1] Vol. ii. pp. 13, 236; Roberts, Lyme Regis, 23. The two distinctions made above concerning a dual system of taxation and the possession of a 'burgagium,' come out quite clearly in the following clause of a Leicester record, to which I have several times referred: 'Nor is it to be understood that the tenants of the bishop shall scot in this manner for amerciaments or fines that touch the community of the town and not the community of the Gild, excepting those who have lands and tenements in the town of Leicester, who are burgesses though tenants of the bishop.' (Vol. ii. pp. 140, 141.) See also Stubbs, Const. Hist., i. 474: 'The merchant guild contained all the traders, whether or no they possessed an estate of land.'

[2] Rot. Chart., 93: 'Ita quod nullus burgensium praedictorum, nisi residens fuerit in praedicta villa de Helleston, has habebit libertates.' See also Gneist, Self-gov., 582; Merew. and Stephens, pp. v., 2080; Cox, Parl. Elections, 177; Baines, Lanc. and Chesh., i. 676; Lyon, Dover, ii. 307, 353; Simpson, Lanc., 279; Gale, Inquiry, p. xiii.; Madox, Firma Burgi, 269.

[3] Welfitt, Minutes, No. 37; Brief Descr. of Preston, 21; Harland, Court Leet Records, 51; Lyon, Dover, i. 221, ii. 353; Simpson, Lanc., 279; Tate, Alnwick, ii. 232; Wodderspoon, Ipsw., 270; Holloway, Rye, 184; Rep. MSS. Com., 1883, p. 168; Johnson, Customs of Heref., 19; Merewether and Stephens, 581, 592, 903, 1714, 2108; Griffith, Records of Hunt., 48–49, 118; Chanter, Barnstaple Records, No. 27; Harrod, Colch. Court Rolls, 7; Morant, Colch., i. 97, 98; Bacon, Annalls, 14, 47. In 32 Henry VI it was enacted at Chester that no one should be admitted to the freedom of the city except in the Portmote only (Addit. MS., Mus. Brit., 16179, fol. 47). See also vol. ii. p. 125, n. 2.

Chester rightly observes, 'is impossible for this reason, that this history does not start from one point or proceed by the same stages [1].' Though all boroughs had much in common, and the constitutions of many were modelled after the same exemplar [2], each had a separate life, developing a personality of its own; nor had parliament yet begun to legislate away these individual peculiarities. While, then, the general principles laid down in this chapter touching the non-identity of Gild and borough will apply in most cases, there were doubtless local variations, ranging from a practically complete amalgamation of the two elements to the other extreme of open antagonism [3].

That circumstances favoured such an amalgamation, especially in the fourteenth century, will become evident if we analyse the population of a medieval English borough. Exclusive of the inhabitants of privileged sokes, the small population [4] was more homogeneous than that of towns exist-

[1] Stubbs, Const. Hist., ii. 236, iii. 454. Merewether and Stephens (pp. v., xxvi., 340, 414, etc.) persist in denying this manifest truth.

[2] See Appendix E.

[3] For a few cases of collision between the two bodies, see vol. ii. pp. 51–53, 184, and, perhaps, ii. 189 ('quod nulla gilda,' etc.).

[4] The smallness of the population was also conducive to such amalgamation. The great concentration of people in towns is a modern phenomenon, due to the growth of manufactures. The population of the country compared to that of towns, in the thirteenth and fourteenth centuries, was in about the inverse proportion to what it now is. Few English boroughs of that period contained more than 10,000 inhabitants; in many there were less than 1000; probably the average of the larger towns fell below 5000. The number of burgesses would, of course, be much smaller; 500 to 1000 would, perhaps, be a fair average for the more prosperous towns; in some boroughs the number is stated, in the sources, to be less than 100. The whole topic, however, needs thorough investigation. See two papers on the subject by Amyot and Hinde in Archaeologia, vol. xx. pp. 524–31; and Archaeologia Aeliana, 1859, iii. 53–64. See also Pike, Crime, i. 179–183; Rogers, Six Centuries, i. 117–121; Hallam, Middle Ages, iii. 25, 223; Thompson, Munic. Hist., 195, and Leic., 87–88; Baines, Lanc. and Cheshire, i. 665, ii. 3; Ellis, Weymouth, 148; Hanshall, Chesh., 365; Morant, Colch., i. 47; Abram, Memorials, 14; Picton, Memorials, i. 20; Tomlinson, Doncaster, 34; Harland, Mamec., 504–508; Blomefield, Norf., iii. 25; Baines, Yorksh., ii. 253; Poulson, Beverlac, i. 212–215; Owen and Blakeway, Shrews., i. 152; Merewether and Stephens, 672–674; Rep. MSS. Com., 1877, p. 524; Madox, Firma Burgi, 59; Charters of Carmarthen, 52; Redfern, Uttoxeter, 95; Beamont, Frodsham, 42; Devon Assoc., xvi. 725; Royal Inst. of Cornwall, Oct. 1865, p. 83; Powysland Club, viii.

ing at present; there were in the former fewer class distinctions, more equality of wealth, and more harmony of interests than there are in the latter. The professional element was almost wholly wanting. Every man was, to a certain extent, a soldier[1]; the chaplains were lawyers; the monks were the teachers, physicians, and *littérateurs*. Almost all townsmen were in some way connected with trade. The few burgher proprietors of large estates who were not merchants found it advisable to join the Gild, in order that they might advantageously dispose of the produce of their lands and the manufactures of their villeins[2]. The same would be true, though in a much less degree, of the humbler agricultural burgher[3]. Most craftsmen, too, as we shall hereafter see, were concerned with the purchase and sale of wares[4]. When trade and industry underwent a great expansion during the period of the three Edwards, the mercantile interests must have become completely dominant in many towns, the burgher merging in the tradesman, and gildship becoming an appurtenance of burgess-ship.

226; Peter, Launc., 53; Pitt, Staffordsh., 355; Cooper, Cambr., i. 58; Archæol. Assoc., Journal, vi. 428; Rot. Parl., i. 228–236, iv. 418; Gale, Inquiry, No. 6; Picton, Selections, i. 37, 46, 90; Sinclair, Wigan, i. 115, 134, 210; Boase, Oxf., 15; Pearson. Middle Ages, i. 381; Reliquary, v. 67; Ashley, Econ. Hist., 68; Cutts, Colch., 105.—The chief commercial centres of Germany in the fifteenth century contained from 10,000 to 20,000 inhabitants (Jastrow, Volkszahl deutscher Städte, *pass.*).

[1] See vol. ii. p. 322; Stubbs, Const. Hist., iii. 644; Duncumb, Hereford, i. 326; Wodderspoon, Ipsw., 270; Johnson, Customs of Heref., 20; Monast. Anglic., vi. 1180–1181; Liber Cust., 636; Bacon, Annalls, 14, 47. Concerning the town of Ross in the thirteenth century an ancient poet sings:

'qe kant vnt .j. corne .ij. feez cornée
tantost la commune est ensemblée
e as armes vont tost corant,
chescun a envie pur aler deuant.'

'If the city horn twice sound,
Every burgess will be found
Eager in the warlike labour,
Striving to outdo his neighbour.'

National MSS. of Irel. iii. p. v., App. ii.

[2] This is clearly the reason why certain lords enrolled themselves in the Gild of Ipswich (ii. 124–125, 376–377); see also Merewether and Stephens, 674. For burgher and citizen landed proprietors, see Baines, Liverpool, 82; Rep. MSS. Com., 1877, p. 579; Stubbs, Hist., i. 476; Freeman, Conquest, v. 360. They were the 'feoffati non mercandizantes' in distinction from the 'officiose negotiantes': see Liber Albus, 286; Fitz-Stephen, in Vita St. Thom., ed. Giles, i. 183. Cf. also Poulson, Beverlac, i. 212.

[3] Doubtless, many of these devoted themselves to husbandry and to small home industries at the same time; just as, on the other hand, craftsmen were often partially occupied with agriculture.

[4] See below, p. 107.

This tendency toward amalgamation in the membership of the two bodies may also be seen in their administration. The bailiffs, provost, etc. of the borough, and the alderman, stewards, etc. of the Gild were taken from one and the same circle. Indeed, a person could be serving in each of these two groups of offices at the same time [1]. Thus the same men swayed the counsels of the borough and Gild. As the mercantile element attained greater preponderance, the natural tendency would be to regard the Gild offices as superfluous, and to consolidate the headship of the Gild and that of the borough—a development which would be hastened by the circumstance that office-holding during the middle ages was generally regarded as a burden [2]. These changes doubtless took place, in great part, gradually and silently, by a process of absorption, rather than of usurpation [3]. Being an official organ of the municipality, the Gild naturally identified itself, from the outset, with the general welfare of the latter; and this solidarity of interests, combined with the other factors which I have just enumerated, prevented much friction or collision between the two bodies. This identity of Gild and borough was especially easy of attainment in towns where the vital centre of burghal energy, the court leet, was dependent upon a mesne lord [4]. The decline of the leet, in the fifteenth century, may also have aided in extending the name and functions of the Gild over the whole area of municipal government in some of the larger towns [5].

[1] We find a striking example of this at Ipswich (vol. ii. pp. 116–121). See also vol. ii. pp. 158, 166, 198, 260.

[2] Coates, Reading, 66–67; Tighe and Davis, Windsor, ii. 400; Yates, Congleton, 123–124; Roberts, Lyme-Regis, 361; Rot. Parl., ii. 459; Davies, Southamp., 168; Rep. MSS. Com., 1877, p. 581; Black Book of Winch., ff. 22, 25, etc.; Bacon, Annalls, 255, 269; Sinclair, Wigan, ii. 236; Lyon, Dover, ii. 268, 289, 344.

[3] This gradual absorption—which, regarded from one point of view, was an expansion of the functions of the Gild, until borough and Gild became coextensive—can be traced in the records of Andover and Southampton (vol. ii. pp. 3–8, 214–231, 289–348).

[4] See below, pp. 90, 91.

[5] For the decline of the leet, see Merewether and Stephens, 947–950, 1011; Gneist, Verfass., 306, and Self-gov., 585; Poole, Sydenham, 171, 172; Palgrave, Corp. Reform, 28.

We shall soon return to the subject of the identity of Gild and borough. I wish here merely to point out the general drift toward such identity in the fourteenth century, which has blinded many writers to the true state of things in earlier times. Owing to this confusion, it is all the more necessary to accentuate the fact that Gild and borough were originally distinct entities. The importance of this distinction will be made more apparent in the next chapter.

CHAPTER VI.

Influence of the Gild upon the Municipal Constitution.

The study of the English Gild Merchant helps to elucidate the municipal history of the continent, as well as that of Great Britain. In the latter we find the maximum development of this institution, whereby we may, to a certain extent, gauge its influence in the other countries of Europe. For if it can be shown that this fraternity was not the basis of the municipal constitution in England, the same is likely to be true—*a fortiori*—of the continent, where the Gild Merchant was a less prominent feature of the burghal polity [1].

In treating this portion of our subject we must sharply distinguish between the influence of the Gild upon the origin of boroughs, and the part it played in the later growth of the borough constitution. To be more specific, we must consider its influence from three different, yet closely related, points of view, representing three stages of development—its relation to the origin of municipal government, to the conception 'free borough' ('liber burgus'), and to early municipal incorporation.

§ 1.

Origin of Borough Government.

Some eminent historians have advocated the theory that, both in England and on the continent, the medieval town constitution was simply an enlargement of the Gild, the latter

[1] See Appendix F.

being the original nucleus, and all else merely later accretions[1]. But as regards England they have advanced very little evidence in favour of this view, and that little is of a dubious nature.

Their chief argument is based upon the London Cnihten Gild. They have identified the latter with a hypothetical Gild Merchant of the metropolis, and from these premises have drawn conclusions concerning the importance of the English Gild Merchant in general. Madox gave them their clue. He ventured the opinion that the name alderman as applied to the functionaries of London wards may have been derived from this fraternity of 'cnihts[2].' Although he begins his statement with a 'perchance,' and ends it with the important reservation, 'But as to these things I speak them onely by conjecture,' nevertheless Hüllmann, Wilda, Brentano, and others accept it as indisputable historical fact. They then proceed to assert that if the ward aldermen were merely the old gild officers, the gild must be the basis of the civic constitution.

Without stopping to point out the palpable gaps and fallacies in such a course of argumentation, it will suffice to state the reasons why we cannot accept Madox's conjecture. In the first place, the term alderman is not mentioned in the sources in connection with any Anglo-Saxon gild, but we know that it was applied to civic officials of London and

[1] Wilda, Gildenwesen, 248, speaks of its being a recognised fact ('anerkannt') that 'eine Gilde die Grundlage der bürgerschaftlichen Verfassung England's bildete.' See also Wilda, 244, 251; Brentano, pp. lxxvi., xcvi., xcix., cv.; Hüllmann, iii. 60-75; Walford, Insur. Cycl., v. 347-349; Gierke, Genossenschaftsrecht, i. 243, 345; Thierry, Œuvres, iv. 182, Récits, ch. vi.; De Vigne, Gildes et Corporations, p. xii.; Thorpe, Dip. Angl., p. xvi.; Lappenberg, Engl., i. 609, 610; Turner, Merch. Guild of Chich., 169; London Liv. Comp. Com., 1884, i. 9; Bain, Aberdeen Guilds, 10; Green, Short History, 197, 198. Fortuyn, 96–102, also accepts the theory of the origin of the burghal constitution from the gilds, but with important reservations. Stubbs (Const. Hist., i. 107), Gneist (Verf. u. Verw., ii. 496; Gesch. des Self-gov., 110), and von Maurer (Städteverf., i. 168–170) reject it. The arguments that I shall advance against this theory apply to the Gild Merchant in particular, and also to gilds in general.

[2] Firma Burgi, 30.

other towns long before the Norman Conquest[1]. Moreover, the head of the Anglo-Saxon hundred was also called the 'caldor' or alderman[2]. A borough or each ward of a large borough, like London or Canterbury, often constituted a hundred[3]. If then writers will insist upon finding some genetic relation between the gild alderman and the ward alderman of later times, there is clearly more evidence to justify us in deriving the former from the latter than *vice versa*. But there is no need of adopting either theory. For apart from its well-known pre-eminent signification as principal officer of the shire, the word ealdor or ealdorman meant in general a headman or chief functionary—the head of a hundred, of a borough, of a village, of an estate, of a monastery, etc.[4] The name simply continued to cling simultaneously to the gild and ward officials, while its application to other institutions became obsolete. The gild alderman and ward alderman of the borough did not coalesce, but continued to exist side by side[5].

[1] Anglo-Saxon Chronicles, anno 886. See also Palgrave, Commonwealth, i. 644, ii. p. cccl.; Spelman, Gloss., 'alderman'; Lappenberg, i. 611: who consider 'alderman' a common name for the chief town officer in Anglo-Saxon times.—In later times alderman continued, in a few cases, to be the designation of the head of the borough: e. g., at Bury St. Edmund's, Stamford, Durham, Malmesbury, Faversham, Richmond, Kendal, Grantham (Abbrev. Plac., 163; Nevinson, Stamf., 109; Surtees, Durham, iv. 4; Moffatt, Malm., 123; Jacob, Faversham, 18; Clarkson, Richmond, 71; Rep. MSS. Com., 1885, App. iv. 299; Cal. Rot. Orig., ii. 224; Munic. Corp. Com. 1835, pp. 2174, 2242).

[2] Palgrave, Commonw., i. 635, ii. p. ccli.; Spelman, Gloss., 'alderman'; Thorpe, Anc. Laws, Gloss., 'hundredes Ealdor'; Riley, Liber Cust., 635; Stubbs, Const. Hist., i. 118. Aldermen of hundreds continued to exist throughout the middle ages (Rot. Hund., ii. 205, 214; Murray, Engl. Dict., i. 212).

[3] Thorpe, Anc. Laws, 116; Stubbs, Const. Hist., i. 106, 459, 701, iii. 603; Palgrave, Commonw., i. 102, ii. p. ccl.; Norton, Comment., 37; Somner, Cant., i. 52; Blomefield, Norf., iii. 11. 'The hundred' was a common designation for the chief municipal court in towns of England, Wales, and Ireland. See vol. ii. p. 341; Cutts, Colch., 135; Holloway, Rye, 187; Chartae Hibern., 12, 13, 21, 22, 25, 80, *et passim*; Jones, Brecknock, 786; Archaeologia, xlviii. 436.

[4] 'In the Anglo-Saxon language the term ealdorman is employed to designate any species of superior' (Palgrave, Commonw., i. 595). See also Schmid, Gesetze, 560; Stubbs, Const. Hist., i. 100, 130, 138, 139.

[5] Vol. ii. pp. 192, 222, 223, 225, 244; Madox, Exch., i. 467, 562; Loftie, London, 22, 45, 48, 56, 78; Firma

The identity of the prior of Holy Trinity and the alderman of Portsokenward, which suggested Madox's conjecture, can be easily explained. We know that the London aldermen of the twelfth century had a proprietary right to their wards, the title of alderman being merely an appurtenance of the devisable estate[1]. The Cnihten Gild[2] was owner of Portsokenward, and as such possessor of an aldermanry. When its lands were transferred to the Holy Trinity, the office went with them, and hence the prior of Holy Trinity became alderman of Portsokenward.

Even if Madox's views were tenable, they ought not to be made the basis of pregnant inferences regarding other boroughs. It is a mistake to consider London the type by which to judge of the general development of English municipal history. In many respects, the metropolis is, and for centuries has been, an anomaly among the towns of England.

The other argument advanced by the adherents of the theory that the borough constitution was originally evolved from the Gild Merchant, is the circumstance that the present English town-hall is often called the gild-hall, which, they contend, proves the early identity of town and Gild. They assume that in early times town-halls commonly or invariably bore the name gild-hall; but they give only a single example of a gild-hall anterior to the thirteenth century, the 'gihalla burgensium' of Dover[3], which, after all, may have been the hall of a circumscribed number of burgesses, and not the common town-hall of the burgesses at large. In fact, the sources rarely mention such municipal

Burgi, 14, 27; Rymer, Foedera, i. 323; Liber de Ant. Leg., 6; Murray, Dict., i. 212 ('eldrene man on his burh'); Archæol. Journal, ix. 74, 81.

[1] Madox, Firma Burgi, 14, 15, 252; Chroniques de London, p. x.; Loftie, London, i. 128. For similar aldermanries in Canterbury and Lincoln, see Somner, Cant., i. 53; Brent, Cant., 104; Rep. MSS. Com., 1883, App. i. 138, 167; Palgrave, Commonw., i. 630; Addit. MS., Mus. Brit., 4530, fol. 37; Madox, Firma Burgi, 14; Larking, Domesday of Kent, App. xxiv.

[2] For more concerning this gild, see Appendix B.

[3] Domesday, i. 1. A 'Gihalda' is also mentioned in the Winchester survey of 1148 (ibid., iv. 545).

gild-halls before the thirteenth and fourteenth centuries[1]; and in many towns the term seems never to have been used at all, some such word as moot-hall[2], tollbooth[3],

[1] The only other examples prior to the thirteenth century that I recall to mind are those of Exeter, presumably temp. Hen. II (Freeman, Exeter, 66) and Gloucester, 5 Rich. I. 'Burgenses de Gloecestria reddunt compotum de ii.*s.*, ut possint emere et vendere in Gildhalla sua. ad emendationem Burgi' (Madox, Exch., i. 467). The earliest mention of the London gild-hall that the author of the history of the latter could find is of *circa* 1212 (Price, Guildhall, 44). It is called 'the public hall' by Giraldus Cambrensis under the year 1191: 'Convocata vero civium multitudine in aula publica, quae a potorum conventu nomen accepit,' etc. (Gir. Camb., Works, iv. 404.) There was no gild-hall in Southampton before the fourteenth century (Davies, South., 71).

[2] Thus at Colchester, Daventry, Ipswich, Kendal, Leicester, Macclesfield, Saffron Walden, Doncaster, Kirkham, Pontefract, Wakefield, Leeds, and Lyme Regis, 'moothall' was exclusively used, or preceded the term gild-hall. See Taylor, Wakef., lxxi., civ.; Thoresby, Duc. Leod., 18; Cromwell, Colchester, 193, 268; Harrod, Colch. Records, 21, 33; Cutts, Colch., 141, 145; Munic. Corp. Com. 1835, p. 1844; Rep. MSS. Com., 1883, pp. 243, 324; 1885, App. iv. 299, 348; Notes and Queries, 1852, v. 532; Earwaker, East Chesh., ii. 475; Braybrooke, Audley End, 259; Tomlinson, Donc., 233, 236; Fishwick, Kirkham, 24, 25; Fox, Pontef., 357 ('Aula Placitorum'); Roberts, Lyme Regis, 350. An Ipswich document of 12 Hen. VIII refers to 'the Town Howse otherwise callid the Moote Halle or Gilde Halle' (Rep. MSS. Com., 1883, pp. 243, 256). In 1427 the old moot-hall or spech-hall of Canterbury was first called the gild-hall (Hasted, Canterbury, i. 109, ii. 615; Welfitt, Minutes, No. 34). See also the following note, and below, p. 82, n. 3, for moot-halls at Preston, Yarmouth, Bedford, Carlisle, and Newcastle. In Wright and Wülcker's Old English Vocabularies, i. 804, 'pretorium' is translated 'a mote-halle,' the word gild-hall not being mentioned. A 'gemot hus' at Winchester is spoken of in a royal grant of the year 901 to the Abbey of Hyde (Liber de Hyda, 86). See also Drake, Eboracum, 224.

[3] Tollbooth was the usual designation in Scotland (Acta Parl. Scot., Index; Maxwell, Old Dundee, 146). It was likewise used in Alnwick, Berwick, Cambridge, Durham, King's Lynn, Lancaster, Manchester, Norwich, Preston, Stockton, Whitby, Morpeth, Bradford, and doubtless in many other places (vol. ii. p. 2; Hodgson, Morpeth, 67; Holroyd, Collectanea, 41; Cooper, Cambr., ii. 103, iii. 26, cf. i. 75, 96; Hutchinson, County of Durham, ii. 33; Registrum Palat., iv. 300; Mackenzie and Ross, Durham, ii. 37, 419; Cartul. de Whiteby, 722; Harrod, Records of Lynn, 16–18; Madox, Firma Burgi, 9; Simpson, Lanc., 278, 282; E. Baines, Lanc., ii. 466). At Preston, moot-hall, 'tollbothe,' and town-hall, were used interchangeably (Dobson, Our Town Hall, 3). 'Booth-hall' or 'bote-hall' was used in Llandovery, Evesham, Gloucester, Hereford, and Shrewsbury (Munic. Corp. Com. 1835, p. 302; May, Evesham, 200; Rudder, Glouc., 89; Johnson, Heref., 56, 112, 121, 178, cf. 208; Phillips, Shrewsb., 132). Toll-house was the name of the town-hall in Yarmouth and Bury St. Edmund's (vol. ii. p. 30; Swinden, Yarm., 806; Antiq. Mag. and Bib., vi. 3: Addit. MS., Mus. Brit., 17391, ff. 60, 158). 'Curiae mercatoriae, quae ad differentiam magnarum curiarum Libertatis scilicet parvae Curiae nuncupantur, debent teneri apud *le* Tolhous de Bury diebus mercatoriis' (ibid., fol. 159, 27 Eliz.). 'Mote-hall' is also found at Yarmouth (Rep. MSS.

tholsel[1], town-hall, common hall, or public hall[2], taking its place; while in others the gild-hall existed side by side with the moot-hall[3]. The latter phenomenon affords a strong confirmation of the view that the Gild and borough were originally two distinct bodies.

In the relatively few towns where 'gild-hall' was unmistakably the designation of the town-hall, this was probably due in some cases to the later fusion of Gild and borough spoken of in Chapter v.; while in many others this use of the name originated as follows. An influential gild allowed the town authorities to use its hall for general municipal purposes,

Com., 1883, p. 324). 'The court house commonlye called the boothes,' is referred to in a Manchester document; 'toll-booth' was also commonly used in Manchester (Earwaker, Court Leet Records, iii. 24, *et pass.*). 'Guihald sive le Tolebooth' occurs in a charter of James II to Berwick (Raine, N. Durham, App. 147). At Norwich the name toll-booth was changed to gild-hall, *temp.* Edw. III, according to Blomefield, Norf., iv. 227. At Malmesbury there were apparently two gild-halls—'gialda'—and a toll-booth, 'theoloneum' (Regist. Malm., ii. p. xxxii., and i. 117). At Worcester both a 'yeldehall' and a 'tolboth' are mentioned (Green, Worc., App. lv., lvii.).

[1] This was very common in Ireland. Thus the term or survivals of it may be found in the records of Athlone, Belfast, Cashel, Clonmel, Carrickfergus, Dingle, Drogheda, Dublin, Fethard, Galway, Kilkenny, Lanesborough, Limerick, Longford, Portarlington, St. Johnstown, Wexford. See vol. ii. pp. 75, 76, 81; Merew. and Stephens, 1618; Munic. Corp. Com., Irel., 132, 253, 301, 337, 368, 465, 484, 502, 534 ('in tolseto'), 719, 763, 825, 1248, 1290; D'Alton, Drogheda, i. 70; Eg. MS., Mus. Brit., 1766, fol. 31. At Galway the 'tollsell or court-house' seems to have been distinct from the gild-hall (Tenth Rep. MSS. Com., App. v. 385, 434, 448, 449, etc.). The second syllable of tholsel = sale = hall; see Halliwell, Dict. of Arch. Words, 702; Luard, Annales Monast., iii. 282 (sala = hall); Gentleman's Magaz., 1851, xxxv. 597 (gild salle = gild-hall). 'Tolsey' or 'Tolsill' was probably the earlier name for the gild-hall in Bristol and Worcester (Taylor, Book about Brist., 245, 279; Ricart, Maire of Bristowe, 52, 53, 122; Green, Worc., ii. 7). It is quite likely that the term was borrowed from Bristol by the Irish towns (cf. Appendix E).

[2] Thus at Chester the name was the 'Common Hall'; at Gravesend, the 'Town House'; at Congleton, the 'Town Hall.' See Ormerod, Cheshire, i. 234–236; Cruden, Gravesend, 198; Head, Congleton, 134. At Beverley the gild-hall was called the hanse-house. See vol. ii. pp. 21, 22; Poulson, Bev., 330, 332.

[3] Thus in Nottingham (Bailey, Nott., i. 28; Rec. of Nott., i. 264, 409, 436; Hist. Review, ii. 366); and probably in Bedford, Carlisle, and Newcastle (Schedule of Bedford Records, 79, 84, 103, 129, 130; Ferguson and Nanson, Records of Carl., 303, cf. 26, 73, 77, 281–283, 293, 295, 304; Brand, Newc., i. 29, 158). So too at Bristol a 'Tolsill' and a gild-hall were co-existent; and at Evesham a booth-hall and a gild-hall (Ricart, 53; May, Evesham, 200). The moot-hall at Nottingham and probably elsewhere existed long before the gild-hall came into being.

at first only sporadically, then more and more frequently, until finally the hall became town property, by purchase, gift, or prescriptive possession. In later medieval times we meet with many interesting examples of this or an analogous development. Thus in 1564 the borough of Leicester purchased the hall of the Corpus Christi Gild. Long before this it had been used temporarily as a town-hall; and after 1564 it was used exclusively for that purpose [1]. In like manner, at York [2], Stratford [3], Thetford [4], Brisingham [5], Boston [6], King's Lynn [7], Lichfield [8], Ludlow [9], and Birmingham [10], the later town-hall appears originally to have belonged to a simple social-religious gild. It follows, then, that the existence of a municipal gild-hall does not necessarily imply the evolution of the early framework of burghal government from a gild [11].

[1] North, Chronicle, 198–199; Notes and Queries, 1852, v. 532; Thompson, Leic., 150; Archæol. Assoc., Journal, xix. 41.

[2] Hargrove, York, ii. 431–432; Drake, Eboracum, 329.

[3] Halliwell, Cal. of Stratf. Records, 1–2; Wheler, Stratf., 106.

[4] Hunt, Thetf., 186–188.

[5] Blomefield, Norf., i. 67, 69.

[6] Thompson, Boston, 234.

[7] Vol. ii. p. 151; Richards, i. 469; Taylor, 137; Mackerell, 181. This is a very instructive example, because here the hall of a Gild Merchant became the common town-hall, although town and Gild in Lynn always remained distinct (vol. ii. pp. 151–170). It is evident then that even where a connection between Gild Merchant and town-hall can be shown, this in itself affords no proof that the municipal constitution originated in the Gild.

[8] Harwood, Lichf., 478.

[9] Hist. of Ludl., 1822, p. 177.

[10] Bunce, Birm., i. 27; English Gilds, 246.

[11] The whole subject of the relation of the gilds to the town government is interesting. In this volume we are particularly concerned only with the Gild Merchant. The influence of the crafts will also be briefly discussed in the next chapter. Concerning the intimate connection of some simple social-religious gilds with the burghal government, I subjoin a few notes, without attempting to exhaust the subject. That these brotherhoods supported charitable and educational institutions, and charged themselves with such public duties as the care of bridges, highways, and town-walls, is a well-known fact. See English Gilds, pp. xxxvii., 205, 249, 256; Wright, Ludlow, 206. A Gild of Calendars kept the town records of Bristol (Rogers, Frat. of Calendars; English Gilds, 287, 428; Ricart, Maire of Bristowe, v 73; Nicholls and Taylor, Bristol, i. 205). In 1515 there was a 'Gilde-halle in Bury wherein the bredryn of the Candelmesse gilde kepe the mony that longith to the town of Bury' (Tymms, Handbook of Bury St. Edm., 5th ed., 89). One of the main objects of the Gild of the Blessed Mary, Chesterfield, was to uphold the liberties of the town (English Gilds, 165–168). Every freeman of Plymouth had to become a member of Saint George's Gild of that town (Rep. MSS. Com., 1883, App. i. 272; Devon. Assoc., vi. 104). Only bur-

The burden of proof lies with those who uphold this erroneous theory. But the reasons for rejecting the latter are not based solely upon the speciousness of the proofs presented by its adherents. The whole structure of the municipal constitution, from the moment when it first becomes dimly visible to us, militates against the acceptance of their theory. The latter implies either a complete identity of town and Gild after the inception of borough institutions in Anglo-Saxon times, or the complete predominance of the Gild over the town, the municipal government being exclusively in the hands of an aristocratic fraternity (a 'collegium nobiliorum civium' or a 'summum convivium'). The preceding chapters show that neither of these alternatives is admissible. If the whole fabric of the burghal polity rested upon the Gild Merchant as a foundation, how came it to pass that the latter's

gesses were admitted to the Holy Trinity Gild of Grimsby (above, p. 27, n. 2). The Holy Cross Gild of Birmingham was 'a real and important part of the government of the town,' though it exercised no general authority (Bunce, Birm., i. 25–27; English Gilds, 239–250). The Corpus Christi Gild of Leicester contributed largely to the public charges; and its masters had power to levy penalties for misdemeanours on the members of the town council, and even on the mayor of Leicester (North, Chronicle, 196–199; Nichols, Leic., i. 378, 592; Thompson, Leic., 209). The Gild of St. George of Norwich was a very influential body. The mayor of the city on leaving office became alderman of this fraternity for the ensuing year. If the alderman of the gild died, the mayor took his place. A person expelled from the brotherhood lost his citizenship. (Blomefield, Norf., iv. 347–352; Norfolk Archæology, iii. 315–374; Rep. MSS. Com., 1870, p. 104.)

A still more important category includes those towns in which a social-religious gild absorbed the whole local government. Such gilds appear to have been few in number, to have been established in the fourteenth and fifteenth centuries, and to have received their death-blow by the gild statute of Edward VI. Though co-extensive with the whole town government, they continued to maintain their fraternal organization (their religious rites, etc.), thus differing from those Gilds Merchant which finally merged their existence in the general government of the borough. These governing religious bodies were probably not the original starting point of the municipal constitution, but gradually grew in power until they became paramount in the few towns where they existed. Examples of this development will be found in the history of Lichfield, Stratford, Wisbech, Maidenhead, and, perhaps, Stamford and Saffron Walden. See vol. ii. pp. 145–146; Petersdorf, Abridg., vi. 610; Lee, Stratford, 16–22, 28–29; Halliwell, Cal. of Stratf. Records, 2, 3; Rep. MSS. Com., 1883, pp. 292–297; Watson, Wisbech, 139–150, 175–187; Antiq. Magaz., iv. 88–90, 131–135; Gorham, Chapel of Maidenhead, 40–45; Nevinson, Stamford, 109; Braybrooke, Audley End, 250, 251; Player, Saf. Walden, 81.

activity became narrowed down to one subordinate department of town government? Such a sudden contraction of power is *prima facie* improbable; it could have been wrought only by a veritable revolution, but of this there is not the slightest trace. The subsidiary position of the Gild in the burghal administration and burghal community during the twelfth and thirteenth centuries, and the absence of all unmistakable traces of its earlier influence upon the other municipal institutions of that period, speak strongly in favour of the view that the Gild was a superinduced element, a separate growth from without, a powerful organism grafted upon the parent stem of the town constitution, but not the fertile germ to which the latter owed its existence.

What this original germ was we can surmise only by reasoning backwards from later survivals. These point, as one would naturally infer from a perusal of the last chapter, to a separate judiciary—a jurisdiction distinct from the shire or other large districts—as the foundation and earliest prominent characteristic of boroughs[1]. The latter originated in Anglo-Saxon times, before the Gild Merchant came into being[2].

[1] This view has the concurrence of many eminent authorities. See Stubbs, Const. Hist., i. 107, 464, 467; Gneist, Verf., 125, 311; Verw., i. 133; Verf. und Verw., ii. 496; Self-gov., 580, 585; Gesch. des Self-gov., 194; Kemble, Saxons, ii. 338; Merew. and Stephens, pp. xii., 300, 381, 930, *et pass.*; Cox, Elections, 133–138; Harland, Mamec., 179, 460; Hunt, Bristol, 57; Maurer, Mark-Courts, 22–23; Smirke, Consuetudinary, 82; Vine, Munic. Inst., 5, 6; Baines, Lanc. and Chesh., i. 692; Sydenham, Poole, 169–172. This view is, of course, rejected by those who hold that boroughs have their root in ancient municipal institutions handed down from Roman times without any break in their continuity. The chief exponents of this theory are Coote, Romans in Britain, 376–383; Wright, Celt, Roman, and Saxon, 505–524, and Munic., Privileges, in Archaeologia, vol. 32; and Pearson, Early and Middle Ages, i. 45–55. But their arguments, as a whole, are not convincing, consisting, in great part, of broad analogies that are applicable to all civilized nations in all ages. The most plausible explanation of the genesis of boroughs is that they originated in the need of a separate jurisdiction and administration for the new defensive centres which were gradually established or reconstructed after the destruction of the old Roman towns, and to which the people flocked for protection in the troublous Anglo-Saxon times. Cf. Robertson, Scotl. under Early Kings, i. 296. This jurisdiction—and hence the borough—was the spontaneous outgrowth of a whole age, and neither a mere survival of an earlier period nor the emanation of any single influence like that of the Gild.

[2] Thorpe, Anc. Laws, Edgar ii. c. 5, and Index under 'Gemot.'

The meeting-place of the burghal moot is more ancient than the municipal gild-hall.

§ 2.

The Free Borough.

We now pass from the misty period of conjecture preceding the twelfth century to one of known fact, from the first beginnings of municipal history to the more fully developed 'free borough' of the twelfth and thirteenth centuries. We are to determine to what extent the Gild Merchant formed a part of the conception 'liber burgus.'

According to Brady and Thompson the former was the essential characteristic of the latter; the one without the other being inconceivable. Brady makes this fraternity identical with the burghal community ('communitas'), which, he contends, consisted of a limited number of privileged merchants who governed the town. 'This Trading Gild, Fellowship, Communitas, or Fraternity, was in those times, with the privileges belonging to it, the very constitution of a Burgh, and was always a select Number [1].' Thus, according to Brady, the Gild was the all-pervading, life-giving principle of the borough. Without stopping to emphasise the fact that Brady's whole knowledge of this fraternity, or, at least, all that he communicates to the reader, is expressed in the vague phrase 'it was a trading society,' we may venture the opinion that a writer who could thus confound the early community, namely, the burgesses at large [2], with a select body, was not qualified to discuss any branch of English municipal history intelligently; the distinguished 'Doctor in Physick' either had a

[1] Treatise, 84; cf. also, pp. 3, 20, 47, 49, 50, 77.

[2] See vol. ii. pp. 31, 120–122, 127, 254, 255, 259; Madox, Firma Burgi, 35–36, 94–95, 115–131, and Hist. of Exch., i. 586–588, 740; Abbrev. Placit., 187, 354; Liber de Antiq. Legibus, 19, 55, 129, 149; Cal. Rot. Chart., 222; Rot. Parl., i. 47, 51; Boys, Sandw., 429. 'Obstitit communitas asserens burgenses omnes unius conditionis esse.' (A.D. 1312, Seyer, Memoirs of Bristol, ii. 94.)

very superficial acquaintance with the sources, or wittingly perverted the truth.

Thompson is not guilty of such palpable errors, but, if possible, he exalts the influence of this fraternity even more than Brady. 'To think of a civic community without its Guild,' he says, 'would in truth be to think of the human body without the vital principle sustaining its activity and progress[1].' Thus this institution was the breath of life that animated the whole municipal organism. He then divides boroughs into two groups; 'quasi-boroughs,' such, for example, as St. Alban's, which had only a Court Leet, and the right to choose their own town officers; and 'real boroughs,' as, for example, Leicester, which were endowed with a Gild Merchant. The latter, he maintains, was co-extensive with the whole town administration, or, at least, all of it that was of real importance, the head of the Gild coinciding with the head of the borough[2]. Thompson reaches these conclusions by generalising from very inadequate data, derived mainly from the history of Leicester, and from a later period, when much that he asserts was really true. Even in the case of Leicester his views involve him in palpable self-contradictions. 'Independence of jurisdiction and self-government,' he affirms, 'virtually constituted a Borough[3].' But in another place he states that the Gild had nothing to do with this independent jurisdiction, i.e., with 'the enforcement of civil and criminal law[4].'

Hüllmann, Wilda, Brentano, and others virtually agree with

[1] Munic. Hist., 119. He also refers to the Gild Merchant as the chief institution of the place, inseparable from its existence (p. 100). See also ibid., 109; Gentleman's Magaz., 1851, vol. 35, pp. 596, 597.

[2] Munic. Hist., pp. ix.–xii., 13, 49; Hist. of Leic., 60, 68.

[3] Munic. Hist., 15. Again, on p. 155, he tells us that a borough was a community that managed its own affairs in its Leet.

[4] Ibid., pp. ix., 13, 36, 100. Again, in Gent. Magaz., vol. 35, p. 263, he contrasts the functions of the Gild and the portmanmote, the latter being 'the scene of the administration of civil and criminal law.' The 'jurors' were the officers who presided over this court (ibid., p. 262, and vol. 36, p. 246). Leicester 'was governed by the jurors, who had a kind of magisterial jurisdiction' (vol. 35, p. 596).

Brady and Thompson, in that they make the grant of gild law identical with that of borough law. 'It became the general rule,' says Brentano, 'to confirm the Gild of a town by granting it all the liberties which another town enjoyed[1].' In another place he asserts that the kings of England used 'to recognize the constitution and liberties of towns . . . by confirming their Gilds[2].' In other words, Gild Merchant implied all the privileges comprehended in the term 'free borough.' The genesis of this error, like that of many others, is traceable to a cautiously expressed conjecture on the part of Madox: 'Peradventure, from these Secular Gilds, or in imitation of them, sprang the method or practice of gildating and embodying whole Towns[3].' The only proof that Madox and, consequently, Brentano, Wilda, and Hüllmann advance to support this opinion is the following passage: 'The men of Andover render account of ten marks for having the same liberty in their Gild as the men of Wilton and Salisbury have in their Gild[4].' The proper interpretation of this passage certainly does not warrant the inference that the grant of the Gild was necessarily tantamount to a concession of a town constitution or 'liber burgus'; nor does it throw a gleam of light on any part of the question. It was quite common in those days to model a particular institution (the market, pleas, crafts, etc.), or the whole constitution, of one borough after that of another[5]. So too the Gild Merchant of one place sometimes served as an exemplar for that of another[6]. Some of the liberties of Andover were modelled after those of Winchester[7], which confirms the conclusion that the extract given above refers to the Gild only as a specific feature, and not as the totality, of the burghal constitution.

[1] English Gilds, p. cv.; cf. Wilda, 146, 251; Tyrrell, Hist. of Engl., iii. pt. ii. 183.

[2] English Gilds, p. cxii.; see also p. xciv.

[3] Firma Burgi, 27.

[4] Vol. ii. p. 3.

[5] See Appendix E.

[6] Above, p. 20, n. 3.

[7] See above, p. 9, and vol. ii. p 3.

Abundant positive evidence against the views of Brady, Thompson, and Brentano, is contained in the preceding chapters. Any knowledge of the real functions of the fraternity, especially of its position in the community as a particular part of the machinery of municipal government, would have precluded such errors. Moreover, if the grant of a Gild Merchant had the signification ascribed to it by these writers, it would have occupied a more prominent place in the town charters, where it appears merely as one of the several corollaries of a free borough. The wording of some of these charters leads to the same conclusion; for example, 'tenant omnes consuetudines suas . . . in gilda et in omnibus *aliis* consuetudinibus'[1]; again, 'Gildam habeant mercatoriam cum omnibus ad hujusmodi Gildam spectantibus in burgo praedicto et *alias* libertates'[2], etc. In some charters a 'liber burgus' is granted and the specific franchises enumerated, but without mentioning the Gild[3]; the latter would not be thus omitted if it were the vital principle of the free borough. In many other charters the Gild and a 'liber burgus' are separately granted[4]. But still more convincing is a record relating to Macclesfield, in which 'liber burgus' and 'gilda mercatoria' are separately defined as two distinct conceptions[5]. These and many other documents already referred to in the course of our inquiry (see Chapters iii. and v.) plainly show that during the twelfth and thirteenth centuries the Gild Merchant was only one of various valuable privileges comprehended in the expression 'liber burgus.' Just as the latter could subsist without the 'firma burgi,' so it could dispense with the Gild, though, as a

[1] Vol. ii. p. 136.

[2] Above, p. 14, n. 1. For other examples, see vol. ii. pp. 17, 279, 'consuetudines suas et nominatim gildam'; vol. ii. p. 148, where the Gild is treated as one specific liberty, being at various times abrogated, but without annulling the 'liber burgus'; vol. ii. p. 18, 'gildam et ceteras libertates'; and vol. ii. pp. 38, 39, 386, 388.

[3] Munic. Corp. Com., 1835, p. 823; Harland, Mamec., 200.

[4] Vol. ii. pp. 357, 385, 386; Williams, Denbigh, 119; Plac. de quo War., 817: Rot. Chart., 51, 93; Taylor, Flint., 30, 31; Merew. and Stephens, 752; Rec. of Caern., 178, 185, 193, 196.

[5] Vol. ii. p. 171.

rule, it enjoyed both these franchises[1]. Thompson's assertion that the fraternity was to be found only in the more powerful towns, is not true; it existed in such then insignificant places as Gainsborough, Altrincham, Macclesfield, Liverpool, Rochester, and Chichester[2].

Indeed, we are struck with the prominence and flourishing condition of the Gild Merchant in many small boroughs that were not highly privileged, especially in those of mesne lords. We have already pointed out that the constitutions of towns were not cast in one and the same mould,—that there are exceptions to the general lines of development laid down in the preceding pages. In some of the towns of mesne lords the Gild was so prominent and active that it probably came to be regarded by the burgesses as the real civic body as early as the thirteenth century. The explanation of this phenomenon is probably to be sought for in the position of the burghal judicature. It cannot be too often repeated that the Gild Merchant in early times had no connection with the borough motes (courts, leets, etc.), and that these formed the real kernel of the original municipal polity—the institution toward which all others gravitated, and from which they in great part emanated. But in most of the episcopal, abbatical, and baronial towns, the courts were not, as in most royal boroughs, under the control of officers chosen by the burgesses, but of bailiffs appointed by the lord[3]. Thus the

[1] Above, p. 22.

[2] Of Rochester and Chichester in the reign of Richard I, Richard of Devizes satirically remarks: 'Rofecestria et Cicestria viculi sunt, et cur civitates dici debeant praeter sedes flaminum nihil obtendunt' (Chronicles of Stephen—Rich. I, iii. 437). But in the fourteenth century Chichester seems to have been a place of some commercial importance (Rot. Parl., ii. 246). There were, in 1402, only forty freeholders and eighteen other tenants in Altrincham; and 122 burgesses in Macclesfield, *temp.* Hen. III (Hanshall, Chesh., 365; Baines, Lanc. and Chesh., i. 665). For Liverpool and Gainsborough, see Picton, Memor., i. 20, and Selections, pp. xi., 13; Stark, Gainsb., 73–75.

[3] Vol. ii. pp. 33–35, 204, 236–239; Stubbs, Const. Hist., iii. 604, 608, 629; Coates, Reading, 50–52; Man, Reading, 341, 353, 358; Gribble, Barnstaple, ii. 333; Poulson, Beverlac, i. 149–158, 176–181; Ormerod, Cheshire, iii. 36; Hoare, Modern Wilts, vi. 768; Leycester, Antiq., 203, 295; Antiq. Sarisb., 266–268.

townsmen would feel the need of a centre of burgensic activity that they could call wholly their own. The Gild was the only institution that could satisfy this want; to it they would instinctively turn, and would soon come to regard it as the most important of their immunities, as the real axis of the burghal polity—the only civic centre round which they could rally their forces in struggling with prelate or baron for an extension of their franchises, or in battling for any other cause. Though the mesne lord frequently bestowed this fraternity upon his burgesses and tolerated its existence, he sometimes tried to control it, and jealously guarded against any infringement of his judicial authority. Hamon de Massy allowed his burgesses of Altrincham to have 'gildam mercatoriam'; but no plea was to be held in the said borough, except in his presence or that of his bailiff[1]. The Earl of Pembroke conferred the Gild upon the men of Gainsborough, but no stranger was to be admitted into the fraternity without his assent or that of his steward in his court[2]. Bitter conflicts between the townsmen and their lord were not uncommon[3]; being most bitter and most frequent in the case of towns held of religious houses[4]. In

[1] Ormerod, Chesh., i. 536.

[2] Vol. ii. p. 91.

[3] The idea of some writers (Yeats, Guilds, 181; cf. Earle, Bath, 85; O'Curry, Customs, ccx.) that the Gild Merchant generally originated in the oppression of the mercantile element by feudal lords is untenable. Though there was a natural antagonism between the representatives of capital and mobility, on the one hand, and stability and landed interests, on the other, it was only in towns of mesne lords that much friction between the two elements is visible.

[4] Besides the instances of acrimonious conflicts between the burgesses and their ecclesiastical lords in which the Gild prominently figures, I find many others in which it is not mentioned. Indeed these uprisings of the townsmen are so numerous in the early part of the fourteenth century as to seem almost like a general movement of mesne towns to become independent of their ecclesiastical lords. We may infer this, also, from the language of Walsingham, who, under the year 1326, says: 'Quorum [i.e. the Londoners] sequentes exemplum, civitatum, burgorum, et villarum communitates, et irrefrenatam assumentes audaciam, chartas et libertates, per quas pure fieri possent liberi, a dominis suis per vim et violentiam extorquere nitebantur' (Gesta Abbatum, ii. 156). For some materials illustrating the whole subject, which is worthy of careful investigation, see ibid., i. 410–423, ii. 155–176, 215–260, iii. 285–371; Annales Monastici, iii. 105–106, 110–

these contests the Gild often seems to represent the aggregate of the burgesses and of the burghal administration, or as much of the latter as their lord has bestowed upon them [1]. Thus we may almost reverse Thompson's dictum regarding the classification of boroughs; and assert not merely that the Gild was to be found in many dependent mesne towns, but that it assumed greater prominence and exerted a relatively greater influence in these than in many far more autonomous boroughs.

Though contending that anterior to the fourteenth century the Gild Merchant did not represent the vital principle of the free borough, except under abnormal circumstances, I am not at all inclined to disparage its importance as one of the chief characteristic elements of the municipal constitution. Thus I cannot agree with the assertion of Merewether and Stephens that rural villages and market-towns were endowed with this brotherhood [2]. We search in vain for an example of this. Andover, the only instance furnished by Merewether and Stephens, was certainly a borough [3]. The Gild Merchant did not necessarily imply considerable commercial prosperity or great industrial resources, but it seems always to presuppose, or to be intimately associated with, a certain aggre-

124, 417–419; Cartularium de Whiteby, ii. 422–428, 501–505; Ryley, Placita, 40, 271–276; Regist. Prior. de Dunst., Harley MS. 1885, fol. 77 b; Addit. MS., Mus. Brit., 26085, ff. 52–54; 28666, ff. 154–164; Monast. Angl., i. 509, iii. 108–112; Gutch, Wood's Oxford, i. 412; Giraud and Donne, Faversham, 14, 15; Rep. MSS. Com., 1877, pp. 506, 507.

[1] For some examples of mesne towns in which the Gild Merchant was prominent, together with some illustrations of the conflicts between the Gild and the mesne lord, see vol. ii. pp. 13–15 21–23, 28–36, 91, 136, 145, 151, 155, 171–173, 175, 189, 191, 202–210, 236–239.—In Germany the development of some dependent towns took a somewhat similar course (Sartorius, Hanse, p. xvii.).

[2] Hist. of Boroughs, 410, 488, 1912. Merew. and Stephens often quibble and distort the meaning of words to prove their propositions. This is well illustrated in the case before us. Andover, they contend, was no borough, because in the records only the 'men,' and not the 'burgesses,' of that town are alluded to. But very frequently these same writers base an argument upon their own presumption that 'homines' and 'burgenses' are synonyms (Hist. of Boroughs, 484, 485, 519, 662, 1157, *et passim*).

[3] 'Burgensibus nostris de Andevera': Rot. Chart., 93.

gate of other franchises—freedom from toll throughout the realm, etc.—which a mere village did not possess[1].

§ 3.

Municipal Incorporation.

Intimately connected with the question of the place of the Gild Merchant in the conception 'liber burgus' is that of its relation to early municipal incorporation. It is the prevailing opinion that Merewether and Stephens definitely cleared up this subject; but their views are misleading and, in part, wholly untenable. They err, above all, in their 'great discovery' that there are no charters of municipal incorporation prior to the year 1439[2]. It can be demonstrated that towns were formally incorporated a century earlier[3].

[1] A passage in the Ipswich records (vol. ii. p. 123) seems to imply that the Gild Merchant was confined to cities and boroughs. The right to trade freely, and to control local commerce and industry implied an amount of general freedom of action that was incompatible with the condition of a community bound to the soil by villein tenure, or hampered with the restrictions of an unprivileged village.—For the connection between the Gild and freedom from toll throughout the realm, see above, p. 44. The almost invariable juxta-position of these two privileges in the charters is probably not accidental.—So, likewise, 'gilda mercatoria' and 'firma burgi' probably went together, or, at least, the one would tend to lead to the other. For the possession and control of the local tolls, without which the powers of the Gild would have been incomplete, constituted an important item in the local revenues farmed by the burgesses.

[2] Hist. of Boroughs, pp. v., xxxiii., 7, 55, 781, 918, 919, 1013, 2311.

[3] For examples of 'communitas' unequivocally used in the legal abstract sense in 33 Edward I, 4 Edward III, 22 Edward III, and 40 Edward III, see vol. ii. pp. 18, 34, 36, 107, 354. The earliest charter of incorporation that I can find any trace of, is one of Edward III to Coventry. The king at the instance of Queen Isabella, who had a life tenure of the manor of Cheylesmore in Coventry, granted, January 20th, 1345: 'dictis hominibus de Couentre tenentibus dicti Manerii quod ipsi et eorum heredes et successores Communitatem inter se decetero habeant, et Maiorem et Balliuos idoneos de seipsis eligere et creare possint annuatim,' etc. The mayor is to have a seal for the recognizance of debts. The burgesses are to have a gaol and cognition of pleas, to be held by the said mayor and bailiffs (Record Office, Charter Roll 18 Edw. III, m. 1; cf. Pat. Roll 19 Edw. III, p. 3, m. 6; Add. MS., Mus. Brit., 26085, ff. 76–77). This charter of Edward III is again spoken of in records of 25 Edw. III and 45 Edw. III (Madox, Collections, Addit. MS. 4531, ff. 4, 23).—The next grant of a 'communitas' is to Hedon, 22 Edw. III; see vol. ii. p.

True the formula of incorporation differs somewhat from that of Henry the Sixth's charters, being much simpler than the latter; but this was due to the fact that the jurists had not yet shrouded the notion in misty complexity; even after the reign of Henry the Sixth the formula underwent changes, corresponding to a further development of the idea, or to its further sublimation by the juridical mind[1]. It does not

107.—In 15 Rich. II the men of Basingstoke received a royal charter which, after a preamble reciting that the king commiserated with the townsmen in their great loss by conflagration ('ignis infortuniam'), proceeds to incorporate them: 'concessimus, pro nobis et heredibus nostris, hominibus ville predicte quod ipsi, heredes et successores sui vnam Communitatem perpetuam de seipsis et unum Commune Sigillum habeant imperpetuum. Quare volumus,' etc. (Rec. Office, Charter Roll 15 Rich. II, No. 15, Feb. 12).—Turning to another class of sources, I find that already in the time of Henry III, Bracton applies the term 'universitas' to towns (De Legibus, i. 450; cf. ibid., i. 58).—In the suit between the abbot and burgesses of Bury St. Edmund's, 33–34 Edw. I (vol. ii. pp. 32–35), the judges finally state that the abbot can appoint and remove the alderman of the borough; they also decide some other points in the abbot's favour, giving as one of their reasons: 'et presertim cum iidem Nicholaus et alii, vnionem communitatis non habentes, non sint libertatis aut dominii capaces tanquam vna communitas, cum de seipsis non habeant capitaneum, etc., preter Abbatem, dominum suum' (Rec. Office, Tower Misc. Rolls, 121).—In a plea of 4 Edw. II Lynn is spoken of as a 'corpus.' Herle: 'Non est simile qe cest un custume regard a chescun persone separate mes ceste custume a un comminalte come a un corps' (Year Books, Edw. II, 103).—In a suit between the men of Great Yarmouth and those of Little Yarmouth, in the same reign, we find these words:—'et predicti Burgenses de Magna J. dicunt quod dicti homines de parua J. . . . audiri non debent, pro eo quod non sunt de aliqua Communitate, nec Commune Sigillum habent, nec aliquod Jus in personis affirmant' (Rec. Office, Close Roll 19 Edw. II, m. 11).—In the Year Books of Edward III the doctrine of incorporation is more fully stated: 'Londres q'est un Cominaltie, come un singuler person qe puit aver action per nosme de common, come un sole person averoit' (Liber Assisarum, 62, 19 Edw. III). 'La comminalty de Londres qe est perpetuel et d'antiquity, qe est un gros,' etc. . . . 'la City est perpetuel,' etc. . . . 'le prime Comminaltie de la City est un gros et un corps de purchacer franktenements,' etc. (ibid., 321, 49 Edw. III; see also ibid., 100, 22 Edw. III).—The Statute of 15 Rich. II, c. 5, speaks of 'Mayors, bailiffs, and commons of cities, boroughs, and other towns which have a perpetual commonalty ('commune perpetuel').—In 1411 (13 Hen. IV) the townsmen of Plymouth petition that they may yearly elect a mayor, and that they may be an incorporated body so as to purchase tenements without royal licence: 'Et q'ils, lour heirs, et lour successours, soient un Corps corporat pur purchacer franc tenement a terme de vie, ou en fee, sans licence roial' (Rot. Parl., iii. 663).—The two towns of Drogheda were united in 14 Henry IV, and made a 'corporate' county (Munic. Corp. Com., Irel., p. 808).—In like manner it would be easy to add examples of municipal incorporation for the reign of Henry V and the early part of the reign of Henry VI.

[1] The Statute of 15 Rich. II, c. 5,

signify whether the words of incorporation are simply 'communitas perpetua,' or 'communitas perpetua et corporata,' or 'corpus corporatum et politicum'; the context plainly shows that substantially one and the same privilege is conveyed [1]. In fact, it is certain that the abstract, subjective 'communitas perpetua'—the 'communitas' regarded as a burghal franchise—had been already evolved from the concrete, objective community; in other words, that the technical or metaphorical notion of municipal incorporation was familiar to Englishmen as early as the reign of Edward I. Moreover, long before this juridical conception of an artificial civic body came into being, the borough had what may with propriety be called a natural corporate existence; it was an aggregate body acting as an individual, making bye-laws, having a common seal [2], holding property in succession, and appearing in courts

which extended Edward I's Statute of Mortmain to cities and boroughs, was probably the main cause of the great increase in the number of charters of incorporation in the fifteenth century, and of the more complex formulation of the latter conception. In many cases, like that of Plymouth mentioned in the preceding note, the *raison d'être* of incorporation is expressly stated to be to enable the burgesses to acquire lands and tenements without special licence. See the charters of Henry VI to Southampton and Ipswich (Addit. MS., Mus. Brit., 4530, ff. 155-165), and Year Books, 39 Hen. VI, p. 13. Cf. Gneist, Verf. und Verw., ii. 504, 505; Cox, Elections, 187.

[1] The arguments of Merewether and Stephens in support of their view that municipal incorporation was entirely unknown anterior to the reign of Henry VI, are often wholly unintelligible, or prove just the reverse of their own proposition. For example, they lay great stress upon the occurrence of the term 'heirs' instead of 'successors' in town charters before the fifteenth century (Hist. of Boroughs. pp. xxi., 422, 439, 528, *et pass.*). But 'successors' occurs in a multitude of charters and other records relating to boroughs under the three Edwards. and even earlier. Hence to adopt their own argument, municipal incorporation must have begun at least as early as the reign of Edward I. For some examples of this use of 'heirs and successors' or 'successors' alone in the thirteenth and fourteenth centuries, see above, p. 93, n. 3; vol. ii. pp. 50, 107, 151, 355, 375, 385, 386; Rep. MSS. Com., 1877, p. 581; 1881, p. 269; Plac. de q. War., 618, 620; Hunt, Bristol, 59; Seyer, Charters of Bristol, 28, 30; D'Alton, Drogheda, i. 158; Dale, Harw., 212; Archæol. Journal, xxix. 351; Cox, Elections, 187; Sinclair, Wigan, i. 103; Addit. MS., Mus. Brit., 31294, ff. 1, 12 (A.D. 1309); Mackerell, Lynn, 200; Madox, Firma Burgi, 44, 56; Chartae Hiberniae, 37, 49, etc. These examples are all anterior to the reign of Rich. II, and could be easily multiplied.

[2] The burgesses of Ipswich had a common seal before 1201 (vol. ii. p. 121). See also ii. 141, 221. In 1305 the townsmen of Salisbury, in order to be relieved from the obligation of paying tallage to the Bishop of Salisbury, sur-

of law[1]. The formal incorporation of boroughs in the fourteenth and fifteenth centuries did not materially alter the town constitution[2]; it was, in most cases, merely a recognition of existing franchises with a stronger accentuation, and a more precise formulation, of the right of independent action as a collective personality, with a distinctive name,—especially as regards the holding of real property[3]. In the sixteenth, seventeenth, and eighteenth centuries the term 'corporation' was more commonly applied to a 'select' governing body, which, since the fourteenth century, had gradually usurped the earlier popular government in most boroughs[4]; with these later close corporations our inquiry is not particularly concerned.

We cannot stop to investigate in detail how the various discordant elements of the borough were, during the twelfth and thirteenth centuries, gradually fused together into one homogeneous body, with its common seal, its common purse, common officers, common privileges, and common obligations, so that all the parts acted together harmoniously, 'quasi cor unum et anima una[5].' The idea of the community as an abstract personality—a political 'corpus,' an 'ens rationis'—

rendered the mayoralty of their city and their other burghal privileges to the king; they also promised to surrender their common seal. See Rot. Parl. i. 175, 176; Hoare, Modern Wilts, vi. 73, 74. 738, 739; Ryley, Placita, 276. Early in the reign of Edw. III a common seal was made by the townsmen of St. Alban's: 'Fiebat interea sigillum, officiarii, et consilia communia, aliis regni burgis tam re quam nomine consona.' But in 6 Edw. III they renounced their liberties before the Keeper of the Rolls of the Chancery, and delivered to him their seal, praying that he would destroy it. See Walsingham, Gesta Abbat., ii. 215, 260; Madox, Firma Burgi, 140

[1] Madox, Firma Burgi, 54–114; Coote, Romans, 375; Cox, 187; Stubbs, Const. Hist., iii. 632. See the early use of the terms 'societas' and 'communa,' as applied to the burghal community, in Blomefield, Norf., iii. 34, and Abbrev. Plac., 65.

[2] This Merew. and Stephens admit (Hist. of Boroughs, 242).

[3] The five characteristics of municipal incorporation in the fully developed form were power to hold property in succession, the right to plead in courts of law, power to make bye-laws, and the possession of a common seal and a distinctive name. All of these, except the last, are mentioned in municipal charters of the fourteenth century.

[4] Munic. Corp. Com. 1835, Rep., 17, 18; Palgrave, Corp. Reform, 56. For the growth of the select governing body see below, p. 110.

[5] Thorpe, Dipl. Angl., 616.

gradually emerged from, and was substituted for, the older conception 'liber burgus[1].' The 'firma burgi,' which implied a collective responsibility of the burgesses, necessitating joint action on their part, and, in their relations to the king or mesne lord, transforming them from an agglomeration of separate tenants into a responsible aggregate individual; the privilege of pleading exclusively within the borough and the return of writs, which severed their courts from the irksome control of the sheriff, strengthening their judicial individuality; freedom from all kinds of toll throughout the realm, which not only contributed much to their general prosperity, but also frequently led to energetic action against other towns refusing to allow the exercise of this immunity[2]; the mayoralty, which gave them a chief officer of their own election, who personified the independent management of their own burghal affairs[3];—these were some of the franchises of the old 'liber burgus' that helped to develop 'esprit de corps', and a feeling of coherence, unity, and independence, and prepared the way for the later notion of technical municipal incorporation. To this category of powerful affinities must be added the Gild Merchant. The latter was from the outset a compact body emphatically characterized by fraternal solidarity of interests, a protective union that naturally engendered a consciousness

[1] If any phrase in the town charters of the twelfth and thirteenth centuries indicated incorporation or its counterpart, it was certainly this ('villa sit liber burgus'). Words like 'in perpetuum' are sometimes added to the latter (Rot. Chart., 118). 'Liber burgus' also often formed a part of the later fully developed formula of incorporation.

[2] See above, p. 44, n. 6; vol. ii. pp. 173–174.

[3] 'Factum Maioris in hiis que tangunt Communitatem est factum ipsius Communitatis' (Abbrev. Plac., 273, 9 Edw. I). The passage relating to Liverpool in Plac. de quo War., 381, also shows the importance attached by the burgesses to this privilege of having a chief officer of their own election. When the king suspended the liberties of a borough, the first and most important change was the substitution of one or more royal wardens in the place of the mayor or other head officer of the town. At the same time, the royal bailiffs of the county would often treat the borough as a part of the 'corpus comitatus':—'et vicecomes et ballivi Regis Comitatus faciant officia regalia in predicta villa de Donewyco' (Madox, Firma Burgi, 155, 21 Edw. I). See also ibid., 51–53; Loftie, London, i. 188.

of strength and a spirit of independence. As the same men generally directed the counsels of both the town and the Gild, there would be a gradual, unconscious extension of the unity of the one to the other, the cohesive force of the Gild making itself felt throughout the whole municipal organism. But the influence of the fraternity was material as well as moral. It constituted a bond of union between the heterogeneous sokes of a borough; the townsmen might be exclusively amenable to the courts of different lords, but, if engaged in trade within the town, they were all members of one and the same Gild Merchant[1]. The independent regulation of trade also accustomed the burgesses to self-government, and constituted an important step toward autonomy; the town judiciary was always more dependent upon the crown or mesne lord than was the Gild Merchant.

Quite distinct from the question of the influence of the Gild Merchant upon the early growth of the municipal corporation is that of its relation to this conception after the latter had fully developed into a juridical abstraction. Many writers assert that 'Gilda Mercatoria' was simply the grant of such formal incorporation; in other words, that 'communitas' or 'communa,' in this abstract sense, and Gild Merchant were synonymous terms. Thus Madox in one of his manuscripts affirms that 'when a town was embodied, it was said to have a Gilda Mercatoria and a Hansa[2].' According to Thompson the Gild Merchant was the 'tangible embodiment and corporate realisation of the community[3].'

[1] See above, pp. 56, 67; vol. ii. p. 378; Rymer, Foedera, i. 41.

[2] Addit. MS., Mus. Brit., 4531, fol. 100; Firma Burgi, 27. Madox was evidently in doubt on this point. Opposite the above-mentioned note in his manuscript he has the words 'Lay this aside as useless,' through which, however, a line is drawn, as though the writer had again changed his views on the subject.

[3] Thompson, Munic. Hist., 100; cf. Gent. Magaz., 1851, vol. 35, p. 596. For the same or similar views, see Brentano, English Gilds, pp. xciii.–xcvi.; Brady, Treatise, 17, 47, 77; Coote, Romans, 412; Hunt, Bristol, 54; Loftie, Lond., i. 166; Causton, Elections, cliv.; Antiq. Magaz., ii. 19, 20. Most of these writers make 'gilda mercatoria' = 'communitas' = 'liber burgus' = formal incorporation. Dr. Stubbs's views on this subject are not very

Before proving the speciousness of this view, two concessions must be made. First, it is quite possible that the gilds in general, and especially the social-religious gilds, exerted some influence upon the formation of the technical idea of incorporation. Their compact organization, the completeness of their unity, might easily suggest a resemblance to a personal entity. Hence formal incorporation of burghal institutions may have begun, as some writers assert, with the gilds; at all events, gilds occur among the earliest examples of express incorporation[1]. Moreover, some towns were governed by a social-religious gild, which seems to correspond to the later technical corporation, though not identical with the latter[2].

Secondly, it cannot be denied that the word 'communitas' in the concrete sense was applied to the Gild Merchant[3]. But this was also true of other gilds, of mere villages, hundreds, counties, religious orders, etc.[4], 'communitas' being a generic term of broad application. Thus within the borough

clearly expressed; he generally leaves the impression that the Gild Merchant was tantamount to the 'communitas,' though he seems at times to incline to the opposite opinion (Const. Hist., i. 464, 467, 475–477, 481, iii. 604; Select Charters, 265).

[1] Merew. and Stephens, 825, 840, 846; Kyd, Corporations, i. 63. Cf. Norton, Comment., 25, 26; Gneist, Verf. und Verw., ii. 504. By a royal patent of 16 Rich. II, certain persons in Boston were allowed to found a fraternity, and to have an alderman; 'et quod idem Aldermannus placitare et implacitare; ac accionem ad communem legem per nomen Aldermanni habere, necnon vnum commune sigillum facere possint;' and they may hold land of the annual value of £10 (Rec. Office, Pat. Roll, 16 Rich. II, p. 2, m. 20). In 20 Rich. II the members of the fraternity of St. Mary in Dorchester were incorporated under a distinctive name, and were made 'persones habiles et capaces ad faciendum, recipiendum, lucrandum et perdendum in curiis et placeis nostris' (ibid., 20 Rich. II, p. 1, m. 29). The fact that most gilds held property will probably explain why they were among the earliest cases of incorporation.

[2] Above, p. 84, note. In a record of 10 Henry IV relating to a craft fraternity, 'gildated' is used in juxtaposition with 'incorporated,' but whether as a synonym or in a distributive sense is not clear: 'quadam arte vocata Lynnenwevercraft numquam incorporata vel gildata' (Madox, Firma Burgi, 206).

[3] Vol. ii. pp. 49, 104, 139, 173, 241.

[4] English Gilds, pp. xxii., xxiii., 201; Liber Cust., 126; Madox, Firma Burgi, 36, 82, 88, 89, and Exch., i. 261, 744; Rot. Parl., i. 4, 6, 161, ii. 212; Abbrev. Plac., 264; Record of Caern., 46, 84; vol. ii. p. 280, n. 1.

'community' there were various minor 'communities[1],' prominent among which was the Gild Merchant.

The non-identity of the Gild community and the borough community, in the concrete sense, has already been proved in a preceding chapter[2]; passages were there cited in which the community of the Gild and that of the borough were plainly distinguished or even contrasted. But as the concrete 'communitas' is really the substratum of the legal, abstract 'communitas,' what is true of the relation of the one to the Gild would, in the main, apply to the other. In confirmation of this conclusion that 'Gilda Mercatoria' was not identical with 'communitas' in the sense of formal municipal incorporation, many additional arguments may be advanced. In those very transactions in which the borough acts as a corporate entity, in conveyances of property, covenants, pleas, etc., the town 'community' is very frequently mentioned[3], the Gild Merchant scarcely ever, the two terms never being used interchangeably. Nor does 'Gilda Mercatoria' appear in any document where it can be indisputably construed as a legal abstraction like 'communitas;' it is always the concrete, tangible privilege whose signification we have pointed out in the preceding pages. The assumption that it was the formal grant of incorporation palpably perverts the meaning of many passages presented in the course of this inquiry. The prominence of the Gild Merchant in many dependent mesne towns also shows that it was not tantamount to municipal incorporation. But there are even more positive and cogent grounds favouring the adoption of this conclusion. In a 'quo warranto' of 4 Edward III, in which the claims of the burgesses of Bedford to certain liberties were investigated, the

[1] Thus 'comminaltie deins comminaltie' is spoken of in 49 Edw. III, the former referring to a gild, the latter to the City of London as a whole (Liber Assisarum, 321).—The term 'communa' is often applied to boroughs in charters of Henry III, generally in the clause relating to immunity of arrest for the debts of other persons, 'nisi forte ipsi debitores de eorum sint communa,' etc. (e.g. Blomefield, Norf., iii. 50; Poulson, Beverlac, 71).

[2] Above, pp. 65–70.

[3] Firma Burgi, 115–131.

Gild Merchant and the right to have a 'communitas' are discussed as two entirely separate things [1]. In like manner, 'communitas,' used in this same abstract sense, and the Gild Merchant are mentioned as distinct ideas in a charter granted to Hedon, 22 Edward III [2]; in a record relating to Bristol, 46 Edward III [3]; and in a dispute between the burgesses and the abbot of Bury St. Edmund's, 33 Edward I [4]. During the reign of Edward III the men of Coventry received two charters, one bestowing upon them a 'communitas,' another granting them a Gild Merchant [5]. Moreover, in many town charters of the fifteenth, sixteenth, and seventeenth centuries, the Gild and the formal incorporation of the borough appear simultaneously as two privileges that are manifestly not regarded as identical [6].

If we accept Dr. Stubbs's view that the erection of a 'communa' in London in 1191 was intended as a recognition of the city's corporate existence [7], this event constitutes another proof of what we have just asserted. For, whatever the precise nature of this commune may have been, the assumption that it was the Gild Merchant is untenable [8]. It is equally wrong to identify the old French 'commune' with the mercantile fraternity of England—two widely divergent institutions. The former was essentially a political, the other a commercial, privilege [9]; the one was, in many cases, a revolutionary growth [10], the other the outcome of a peaceful

[1] Vol. ii. pp. 17–18.

[2] Vol. ii. pp. 107–108.

[3] Vol. ii. p. 354.

[4] Vol. ii. pp. 31–36.

[5] Above, p. 93, n. 3; and vol. ii. pp. 49, 50.

[6] Above, p. 15, n. 2; vol. ii. pp. 250, 273, 392; Charters of Ludlow, 7, 11; Jewitt, Plym., 244, 249; Fox, Pontef., 21; Parker, Wycombe, App., 26, 27; Duncumb, Heref., i. 356, 359; Sydenham, Poole, 180–182; Fraser, Elections, i., App., p. vii.; Street, Grantham, 107; Tomlinson, Donc., 31; Merew. and Stephens, 970, 998, 1000, 1001, 1035, 1240, 1241, 1493, 1620, 1621; Raine, North Durham, 145, 148. In most of these cases the grant of the Gild does not stand in juxtaposition to the formula of incorporation; hence it cannot be claimed that the former is a part of the latter.

[7] Stubbs, Charters, 265, 308; Const. Hist., i. 463, 707; Hoveden, Chronica, iii. p. lxxviii.

[8] Above, p. 21.

[9] Stubbs, Charters, 265.

[10] Ceuleneer, Communes, 169, 170.

development. The French commune embraced the totality of the town government and of the burgesses, and it implied incorporation[1]; neither of these characteristics belongs to the early Gild Merchant. Finally, in the words of Dr. Stubbs, the commune lacks 'the ancient element of festive, religious, or mercantile association which is so conspicuous in the history of the guild[2].' In the many charters granted by John and other English kings to the towns of France[3] and England, the 'communa' of the former is never confounded with the 'Gilda Mercatoria' of the latter.

The only plausible argument in favour of the view that the Gild was identical with 'communitas' or 'communa,' in the corporate sense of the term, is the passage in Glanvill: 'Si quis nativus quiete per unum annum et unum diem in aliqua villa privilegiata manserit, ita quod in eorum communam, scilicet gildam, tanquam civis, receptus fuerit, eo ipso a villenagio liberabitur[4].' In some texts 'communem gildam' appears instead of 'communam, scilicet gildam[5]'; the best manuscripts in the British Museum and Bodleian Library have the latter reading[6]. But the whole clause 'ita . . . fuerit' may be a gloss added in the thirteenth century. Indeed, this appears quite probable when we consider that a corresponding passage in the records of the twelfth century does not have this clause[7]. But conceding that these are Glanvill's own words, then we must contend that he did not refer to incorporation or to the French commune; for the privileged towns of England under Henry II and his im-

[1] Giry, St. Omer, 154, 165; Warnkönig, Fland., i. 334, 335, 355; Madox, Firma Burgi, 35.

[2] Stubbs, Const. Hist., i. 479.

[3] Rot. Chart., 14, 132; Madox, Firma Burgi, 35, and Exch., i. 525; Giry, Étab. de Rouen, i. 47, 439.

[4] Stubbs, Charters, 162; Acta Parl. Scot., i. 147.

[5] Houard, Traités, i. 444.

[6] Cotton, Claud. D. ii., fol. 85; Harley 746, fol. 20 b; Bodl. 564, fol. 17; Bodl. 595, fol. 32. A friend at Oxford kindly examined the last two MSS. for me. The abbreviation 's.' in the last three may stand for 'scilicet' or 'sive'; the Cotton MS. has 'sc.' Bodl. 564 has 'communiam'; the others 'communam.' In the Harley MS. 'ita' is followed by 's[cilicet] quod,' etc.

[7] See above, pp. 30, 59.

mediate successors had but little autonomy. London, the most privileged of them all, did not receive a grant of the 'communa' until 1191. We must construe 'communa' not as equivalent to, but restrictive of, 'gilda.' Thus Glanvill—or the later glossator—knowing that the word 'communa' in the concrete sense was used in English towns to apply to various bodies, added the words 'scilicet gilda' to clear up any doubt as to which 'communa' he meant. A modification of this interpretation is to explain 'in communam scilicet gildam' (or 'in communem gildam') as meaning merely 'in common charges,' in 'geld,' with the burgesses[1]. Strongly in favour of this view is the wording of a corresponding passage in a charter of Henry II to Lincoln: 'si aliquis . . . manserit in civitate Lincolnie . . . et dederit consuetudines,' etc.[2] Here, as the context of this document and other contemporary records of Lincoln clearly demonstrate, 'dederit consuetudines' equals 'dederit gildas' or being 'in gilda[3].' A stipulation concerning villeins in many town charters of the thirteenth century is, as has been already stated, open to this same construction[4].

My interpretation of the Gild as something distinct from municipal incorporation is, I am aware, at variance with that of most legal writers. Coke, who is generally referred to as the authority on this point, informs us that in ancient times the inhabitants or burgesses of a town were incorporated when the king granted them 'Gilda Mercatoria[5].' This doctrine has often been maintained in courts of law, and

[1] This is the view of Cox, Elections, 174, and Merewether and Stephens, 350; but they do not attempt to prove it. For 'commune' = a common payment see Du Cange, Gloss., 'commune' (1); see also Madox, Firma Burgi, 270 ('quietae de Communitate et Geldis Burgi Huntendoniae'), and cf. ibid., 280.

[2] Rymer, Foedera, i. 40.

[3] Vol. ii. pp. 146, 378. Cf. 'ad gildas et consuetudines' in the charter given by Rymer.—'Consuetudo' was also similarly used as a substitute for 'community.' See vol. ii. pp. 34, 182, 251, 378; Blomefield, Norf. iii. 34.

[4] See above, p. 59.

[5] 'Et fuit bien observe que dauncient temps inhabitants ou Burgesses dun ville ou Burgh fuerent incorporat quant le Roy graunt a eux daver Guildam Mercatoriam' (Reports, Pt. x. 30). Cf. vol. ii. pp. 200, 269.

sometimes with success[1]. Nevertheless, it must be regarded as the arbitrary interpretation of an eminent jurist, which came to be thoughtlessly accepted as a fact by most legal and historical scholars[2].

A parallel perversion of the truth is to be found in the history of the 'firma burgi' and some other municipal privileges. From the time of Edward IV, the possession of fee-farm by a town was held in the courts of law to imply municipal incorporation; but no historian would now venture to assert that previous to this reign, or even afterwards, the grant of 'firma burgi' actually embraced formal incorporation. But the figment, originally the emanation of some jurist's fertile brain, came to be regarded as a trustworthy precedent for judgment in the law courts[3].—Well may Madox exclaim: 'One general Figurative notion of Incorporeity hath produced many fictions[4].'

It is quite probable that Coke's erroneous interpretation of the Gild may be traced to the same source as another even more unwarranted. Many law books define 'Gilda Mercatoria' as the right to hold pleas of land[5]. The main authority

[1] Vol. ii. pp. 269, 270; Elton in Encyc. Brit., xvii. 30; Merew. and Stephens, pp. 1854, 1874.

[2] See Rolle, Abridgm., i. 513; Viner, Abridgment, vi. 263; Luders, Elections, ii. 241; Stephen, New Commentaries, iii. 10; Blackstone, i. 452; Thompson, Essay, 100, 105; Tyrrell, Hist. of Engl., iii. Pt. ii. App. 182, 186; Herbert, Livery Comp., i. 28; Coote, Romans, 376; Hunt, Charters of Bath, 78; Worth in Devon. Assoc., Proc., xvi. 744.

[3] Viner, Abr., vi. 263; Bacon, Abr., ii. 254; Merew. and Stephens, pp. xxxiv., xxxviii.–ix., 214, 354. Cf. also Stubbs, Const. Hist., i. 467, 468; Kyd, Corporations, i. 43; Archaeologia, ii. 319. In like manner it was held that either the privilege of being exempt from toll or the right to have a mayor implied legal incorporation. See Brooke, Abr., ed. 1573, i. 190; Traditions of Newport, etc., iv. 22; Viner, vi. 264; cf. also Stubbs, Charters, 265, 308; Freeman, Exeter, 59, 74.—Some towns, even after they had been formally incorporated, had no mayor (Madox, Firma Burgi, 28, 29).

[4] Addit. MS., Brit. Mus., 4531, fol. 122.

[5] See Cowel's Interpreter and Blount's Law Dict. under 'gild merchant'; Archaeol. Assoc., Journal, xxxvi. 279; Drake, Eboracum, App. xxxii.; Turner, Merchant Guild of Lewes, 96; Simpson, Lancaster, 279. The statutes of 37 Edw. III and 15 Rich. II, which are sometimes cited to prove this statement, do not afford any evidence in support of it. A record given in vol. ii. p. 108, affirms that the Gild Merchant was a court which had jurisdiction in various pleas, 'so the same do *not* concern the title of lands.'

for this statement cited by them is a writ of the reign of Richard II directing that a certain plea of *novel disseisin* should not be held outside the city of Winchester, because the latter's charter stated that no one belonging to the Gild Merchant of Winchester should plead without the walls of the town[1]. Now Coke quotes this same writ in support of his view that the grant of the Gild signified formal incorporation. How either meaning could have been derived from the above-mentioned passage, it is not easy to conceive.

To sum up the conclusions reached in this chapter, we may state: that the influence of the Gild Merchant manifested itself, not in the origin, but in the development, of the municipal constitution; that it was one of the most important privileges constituting the 'liber burgus' of the twelfth and thirteenth centuries; and that, in conjunction with other liberties, it aided in evolving the later legal idea of technical municipal incorporation, but was never actually equivalent to the latter.—I have omitted all mention of one interesting phase of the influence of gilds on the development of the borough constitution, namely, that of the craft fraternities. This subject, together with the relation of the crafts to the Gild Merchant, will be discussed in the next chapter.

[1] Registrum Omnium Brevium, 219; cf. vol. ii. p. 258.

CHAPTER VII.

The Gild Merchant and Craft Gilds.

When we study the municipal history of the principal countries of Europe, we are struck by the existence of certain features common to all of them [1]. Nevertheless, each country maintains an individuality of its own. This is particularly true of England. The Norman Conquest by strengthening the crown gave a particular direction and a peculiar colouring to the whole course of English municipal history. There was in England no 'communa' as in France and Flanders, no federation like the 'Städtebund' of Germany [2] or the 'Hermandad' of Spain, no oligarchic 'summum convivium' as in Denmark, no fierce conflict between patricians and craftsmen as in the Netherlands, Switzerland, and Germany, no civic 'imperia in imperio' as in Italy. A potent royal prerogative like that of England was not congenial to the growth of such institutions. It is then radically wrong to transplant certain prominent features of the burghal development on the continent to Great Britain, without other evidence than that of analogy. Even where the lines of development are in great part parallel, care must be taken not to confuse the one with the other, as many writers have done in treating of the history of English crafts.

[1] The affiliation of medieval boroughs affords a good example of this. See Appendix E.

[2] The Cinque Ports, though a very powerful body, whose history is of national importance, never had the independence and political signification of the German municipal federations. Concerning the five Danish Burghs which seem to have been associated together, little is known (see Palgrave, Commonw., i. 644, ii. p. ccxcv). The union of Dublin, Cork, Limerick, and Drogheda in 1285 was of little importance (Gilbert, Documents, 196). The only federation worthy of comparison with those of the continent is to be found in Scotland. See Appendix D.

We are particularly concerned with only one phase of this subject, namely, the relation of the craftsmen or artisans and their associations to the Gild Merchant. It is necessary at the outset to emphasise the fact that, generally speaking, craftsmen were freely admitted to the Gild Merchant in the twelfth, thirteenth, and fourteenth centuries[1]. The term merchant, as is well known, was not in those days confined to large dealers, but embraced all who traded[2]. The line of demarcation between merchant and craftsman was not yet sharply defined. Every master craftsman was regarded as a merchant, for he bought his raw materials, and sold the products of his handiwork in his shop or at his stall, just as some coopers, shoe-makers, bakers, and other tradesmen still do at the present day. The glover bought his skins; the baker his corn; the butcher sold hides as well as meat; the weaver, fuller, and dyer bought wool and woad, and sold cloth; the tanner bought bark and hides, and sold leather[3]. Craftsmen were not only admitted to the Gild Merchant, but also, in all probability, constituted the majority of its members.

Most writers assert that the English Gild Merchant was the ruling body of the borough, an aristocracy of rich

[1] Vol. ii. pp. 4, 6–8, 14, 60, 138, 143, 197, 198, 205, 210, 227, 240, 245, 246, 277, 313, 314, 316, 328, 334, 336, 340, 345.

[2] 'Mercator superveniens in civitatem et trusellum deferens' (Domesday, i. 263). 'De mercatoribus, videlicet, piscatoribus, factoribus pannorum, tannatoribus,' etc. (Rot. Hund., i. 531). 'Mercator, de quacunque patria sit, portans mercimonia sua super dorsum suum, vocatus haukers,' 11 Hen. IV (Black Book of Winch., 5 b). See also vol. ii. pp. 8, 35, 132, 237, 358, 359, 378; Maseres, Hist. Angl., 42, 52; Poulson, Beverlac, i. 53, 255–257; Herbert, Liv. Comp., i. 23; Thompson, Munic. Hist., 14.

[3] Vol. ii. pp. 144, 173, 205, 206, 254, 274, 277, 293, 328, 336, 345, 358, 378, 381, 382; Cunningham, Industry, 210; von Ochenkowski, 110, 164; Welfitt, Minutes, No. 21; Placita Abbrev., 65; English Gilds, 210, 358, 384; Ferguson and Nanson, Carl., 28; Archaeol. Journal, vi. 146, 147, ix. 79; Madox, Firma Burgi, 204; Ashley, Econ. Hist., 94, and Woollen Industry, 72; Liber Cust., 130; Tate, Alnw., ii. 328–348; Nicholls and Taylor, Bristol, ii. 267. Early in the sixteenth century Armstrong speaks of 'pore handy craft peple, which that wer wont to kepe shoppes and servaunts, and hadd labour and levyng by making pyns, poynts, girdells, glovis, and all such other thyngs necessary for comon peple' (Pauli, Drei Volksw. Denk., 39).

merchants who tyrannized over the craftsmen, and debarred the latter from sharing in the mercantile privileges of the town[1]. But the truth is that a popular, and not an oligarchic, form of government prevailed in English boroughs of the twelfth and thirteenth centuries[2]. The only plausible evidence advanced to support the theory of the general exclusion of craftsmen from the burghal and mercantile franchises, is the fact that in London, Beverley, Oxford, Marlborough, and Winchester, certain weavers and fullers did not enjoy the rights of full burgesses[3]. But it is far more rational to consider the restrictions upon these artisans as exceptional, being probably due to the circumstance that they were regarded as alien intruders who were attempting to develop a comparatively new branch of industry[4]. In later times we meet with

[1] This is the view of the writers mentioned below, p. 109, n. 3.

[2] See, for example, vol. ii. pp. 116–123 (Ipswich); the constitution of Ipswich is expressly stated to be like that of other free boroughs (ii. 115, 117, 123).

[3] Liber Cust., lxi., 130, 131 (*temp.* Edw. I); cf. Liber Albus, 119; von Ochenkowski, 60; Ashley, Woollen Ind., 20, and Econ. Hist., 82, 83. The plea in Abbrev. Placit., 65, is sometimes cited to prove the same concerning the fullers and dyers of Lincoln, but the words 'non habent legem nec communiam cum liberis civibus' apply to the fullers only. The consuetudinary of Winchester, which seems to be contemporary with the documents in Liber Custumarum, clearly admits the construction that weavers were allowed to enjoy the municipal franchise, and hence that those documents applied only to an exceptional class of persons. See Archaeol. Journal, ix. 70, 77, 85. It is very doubtful whether the weavers, dyers, and fullers were of an inferior status in many towns of England. In the time of Henry II and John the weavers of the city of York had the monopoly of the manufacture of cloth in the whole county (Close Roll, i. 421); these were important functions for a body of men to possess who, we are told, were incapable of acquiring citizenship and were oppressed by the town authorities. Weavers were admitted to the Gild Merchant of Wycombe and Andover early in the fourteenth century (vol. ii. pp. 277, 336). At Chesterfield in 1294 only burgesses could be dyers, unless a satisfactory fine was paid (vol. ii. p. 46). See also vol. ii. pp. 14, 60, 210, 246, 313, 378; Rep. MSS. Com., 1881, p. 404; Thompson, Leic., 87; Cutts, Colch., 154; and the lists of names referred to in vol. ii. pp. 14, 60, 210, and in Hoare, Modern Wilts, vi. 78, 742. These rolls of members of the Gild Merchant, some of which date from the reign of Henry II, mention weavers, fullers, and dyers. Whatever may have been the status of weavers and fullers in some towns of England during the twelfth and thirteenth centuries, these rolls prove conclusively that craftsmen, as a rule, were freely allowed to enter the Gild Merchant and to enjoy the other burghal franchises.

[4] During the reign of Henry I many Flemish artisans, probably mainly connected with the woollen industry, settled in England. See Macpherson, Com-

Dutch and French immigrants, engaged in these same occupations, who suffered similar disabilities in some parts of England [1]. At Berwick-upon-Tweed in the thirteenth century the Flemings are said to have dwelt apart from the burgesses as a separate gild [2]. If English craftsmen as a class were excluded from any burghal franchises, we should certainly find much confirmatory evidence in contemporary records. But the latter, as I have pointed out, plainly indicate that craftsmen as a rule were allowed to participate in the municipal privileges, and were freely enrolled among the members of the Gild Merchant.

As to a general struggle throughout England between the Gild Merchant and the craft gilds in the fourteenth, or any other, century, resulting in the victory of the latter and a democratisation of municipal government, all this is a myth, for the wide acceptance of which Brentano is mainly responsible [3]. Not a single unmistakable example of such a conflict has ever been deduced. The 'Zunftrevolution' of Germany was not possible in a country where royalty was potent [4], and

merce, i. 316; Smiles, Huguenots, 451; Poulson, Beverlac, 57, 58. A comparison of the two Winchester Surveys in Liber Winton. seems to indicate that weavers, fullers, and dyers established themselves at Winchester during the reign of Henry I (Domesday, iv. 531–562; cf. Woodward, Hampsh., i. 285).

[1] Smiles, Huguenots in Eng., 463–465; Bourne, Engl. Merchants, 78; Burn, Protestant Refugees, 6–12; Norf. Antiq. Misc., iii. 189–91.

[2] Robertson. Scotl. under Early Kings, i. 179; Scott, Berwick, 61, 239.

[3] Brentano, Engl. Gilds, cxi.–cxiii., cxix. Most English writers servilely follow Brentano, or adopt his theory in great part. Among these we will mention only: Walford in Antiq. Magaz., ii. 20, 79, iii. 76; Yeats, Guilds, 181; Ludlow in Contemp. Rev., xxi. 562; Salvioni, Gilde, 76–81; Green, Short Hist., 199; Ashley, Woollen Industry, 18–25, and Econ. Hist., 79–84; Loftie, London, i. 128, 143, 167; Hunt, Bristol, 63, and Bath Charters, 77; Ferguson and Nanson, Carlisle, 24; Ferguson, Dormant Book, 300; Nicholls and Taylor, Bristol, i. 152–158; Amery, Gild Merch. of Totnes, 181–182; Bain, Aberdeen Gilds, 8, 11. Among the few writers who do not accept Brentano's view are Dr. Stubbs, Const. Hist., i. 475 (but cf. iii. 607, 608); Cunningham, Industry, 129, 130; von Ochenkowski, 58–62, 75. But they do not express themselves strongly enough on the subject, though von Ochenkowski's protest is quite emphatic.

[4] Schmoller strikes the key-note of the cause of the difference between the continental and the English developments when he says, in speaking of Strasburg: 'Da keine Staatsgewalt existirte, die von oben herab hier Hülfe und Reform bringen konnte, war zunächst die Zunftrevolution unvermeidlich' (Strassburg's Blüte, 34). In England

where the form of government in towns was, in great part, democratic. The change that actually took place in English municipal government during the fourteenth and fifteenth centuries was in the reverse direction from that portrayed by Brentano and his followers; the government in many towns gradually passed from the hands of the burgesses at large into those of a close, 'select' body. We cannot stop to discuss the genesis of this important transformation. It was due to several factors, among which the apathy of the burgesses themselves—their anxiety to be rid of the burden of office-holding—and the increase of population, deserve to be emphasized. But the new, irresponsible governing body, as was to be expected, soon began to abuse its power; their unjust assessment of tallages and irregular administration of the civic finances soon led to dissensions, the people attempting to regain their ancient power. In these troubles we scarcely ever meet with any mention of the Gild Merchant, and rarely with any reference to the crafts as such. It was a struggle between the governing council (the 'magnates,' 'potentiores,' etc.), on the one side, and the burgesses at large ('communitas,' 'populus,' 'minores,' etc.), on the other[1].

the king generally intervened to settle local dissensions, and always prevented them from becoming very formidable. See the next note.

[1] I have collected considerable material illustrative of the history of the growth of the 'select bodies' or close governing council in English towns; and I hope some day to be able to discuss this subject in detail. Some account of it will be found in May, Const. Hist., ii. 494–496. See also vol. ii. 25, 156, 170; Cal. Rot. Chart., 222; Rymer, Foedera, i. 478; Rot. Hund., i. 263; Madox, Firma Burgi, 94, 95; Rot. Parl., i. 47, 51, iv. 476, v. 121; Blomefield, Norf., iii. 126; Rep. MSS. Com., 1881, pp. 410, 424; 1887, App. iii. pp. xiii.–xv., 191–194; Plac. Abbrev., 187; Woodward, Hamp., i. 277; Owen and Blakeway, Shrewsb., i. 169–174; Poulson, Beverlac, 126, 253, 286. The dissensions at Bristol, 1312–1316, which have been erroneously called a fierce conflict between plebeian crafts and an aristocratic Gild Merchant, strikingly illustrate the true nature of the struggle that took place in many towns of England. The tumults at Bristol were caused by an attempt on the part of fourteen influential townsmen to withdraw the management of municipal affairs from the hands of the burgesses at large. One of the records begins thus: 'Jam pridem orta fuit dissencio in villa Bristollie super consuetudinibus in portu maris et in foro, super privilegiis et aliis rebus, in quibus quatuordecim de majoribus ejusdem ville videbantur prerogativam habere. Obstitit com-

In a few mercantile centres, mainly in the North of England, the crafts occupy a more prominent position in these struggles, and were ultimately allowed to participate in the government of the town. They thus became integral parts of the municipal constitution, having political as well as economic functions. The only examples of this development that I have met with are to be found in the history of Newcastle [1], Durham [2], York [3], Carlisle [4], Morpeth [5], Dublin [6],

munitas, asserens burgenses omnes unius condicionis esse, et ob hoc in libertatibus et privilegiis pares existere. Super hujuscemodi rebus frequentes inter se habuerunt altercaciones, donec in Curia Regis impetrarent judices, qui de caussa cognoscerent et ipsam debite terminarent' (Vita Edw. II, 167). See also vol. ii. p. 25; Seyer, Memoirs, i. 509, 510, ii. 88–109.

[1] Vol. ii. pp. 380–385. The struggle is rarely spoken of as one between the merchants and craftsmen; this is, however, the case at Newcastle in 1516 (ii. 380), though the earliest documents do not mention the merchants (Brand, Newc., ii. 157, 158, 162).

[2] By a charter of 1602 the government of the city of Durham was placed in the hands of an annually-elected mayor, twelve aldermen, appointed for life, and 'the twenty-four.' These two bodies together with the mayor constituted the common council. The twenty-four were annually elected by the mayor and aldermen, two being chosen from each of twelve mysteries or crafts. See Hutchinson, Durham, ii. 23–29; Munic. Corp. Com. 1835, p. 1511.

[3] A royal patent of 4 Edward IV ordered that the craftsmen of the trades of York should nominate two aldermen, from whom the upper house (i.e. the aldermen) should elect the mayor. According to another patent of 13 Edward IV, all the citizens were to assemble and choose a mayor from among the aldermen. According to a grant of 9 Henry VIII, the government of the city was entrusted to a mayor, sheriffs, aldermen, and a common council. The last-mentioned consisted of two chosen from each of the thirteen principal crafts, and one from each of fifteen inferior crafts. This body, together with the oldest searcher from each craft, was to assemble yearly and nominate three members of the court of aldermen, from which three the mayor, sheriffs, and aldermen were to elect one to be mayor for the ensuing year. In a similar manner the common council chose the sheriffs and the aldermen, when any of the latter happened to die. See Drake, Eboracum, 185; Merew. and Stephens, 1128; Rymer, Foedera, xi. 529.

[4] In the time of Elizabeth the mayor and eleven councillors formed the town council of Carlisle; but four masters from each of eight crafts participated with them in the local government, especially in helping to audit the accounts and to make freemen. See vol. ii. pp. 39, 40; Ferguson and Nanson, Carlisle, 29–31, 227.

[5] In the eighteenth century the body which made the bye-laws of Morpeth and elected its members of parliament, consisted of seven brethren elected by the Companies: four Merchants and Tailors, six Tanners, three Fullers and Dyers, three Smiths, Saddlers, and Armourers, three Cordwainers, three Weavers, two Skinners, Glovers, and Butchers — twenty-four in all. See Mackenzie, Northumb., ii. 192; Hodgson, Morpeth, 65–68.

[6] 'Whereas the common council of

Kilkenny[1], and Drogheda[2], where the crafts as such were represented in the common council of the borough, their representatives generally constituting a lower branch of the local legislative body, subordinate to the aldermen of the wards[3]. In some of the above-mentioned boroughs the crafts as such also took part in the election of town officers[4].

But this is an exceptional phenomenon. In most towns

the said city doth consist of a Lord Mayor and twenty-four Aldermen, who have usually sate together in one Room apart by themselves, and also of such who are commonly called Sheriffs Peers, not exceeding forty-eight persons, and of ninty-six other persons who are elected into the said common councel, out of several of the Guilds or Corporations of this City, and who have usually sate together in one Room apart by themselves, and have been usually called the Commons of the said City, amongst whom the Sheriffs of the said City for the time being do preside,' etc. (Rules, etc., by the Lord Lieutenant, 1672, p. 8). In 1835 twenty-five gilds were thus represented in the common council (Munic. Corp. Com., Dublin, 13). See also vol. ii. pp. 78, 83, 84.

[1] In 1680 the masters and wardens of the various companies had a seat in the common council of Kilkenny; but they were excluded by a town ordinance in 1697. (Munic. Corp. Com., Irel., 539.)

[2] In 1662, the common council of Drogheda consisted of twenty-four members, being made up of two brethren from each of the craft gilds, excepting that of the merchants, which sent six representatives. In 1835 there was a select body called the assembly, comprehending the mayor, sheriffs, and aldermen; there was also a common council, fourteen of whose members were elected by the seven Gilds—the bakers, butchers, carpenters, shoemakers, skinners, smiths, and tailors. (Munic. Corp. Com., Irel., 813, 817.)

[3] At Beverley, likewise, the crafts as such had some share in the management of town affairs. In cases of moment, and when any important alteration in the bye-laws of the town was to be made, then the twelve governors 'ordand and statuted,' but with the concurrence of the heads of the various crafts (Poulson, Beverlac, 253–257; cf. vol. ii. p. 23).—It is possible that the burghal development in Scotland exerted some influence upon that of North England.

[4] In London since 49 Edw. III the mayor and some other officers of the city have been elected by the trading companies—since 15 Edw. IV by the liverymen assembled in the Court of Common Hall. Until the present century the members of parliament for the city were chosen in the same way. The election of aldermen has always been by the wards; the same is true of the common-council men, with the exception of the period, 49 Edw. III—7 Rich. II. See Norton, Comment., 114–116, 126, 127, 244, 245, 248. The facts concerning the common council are concisely stated in Liber Albus, 41: 'ubi prius [49 Edw. III] eligebantur hujusmodi Communarii per Wardas, quod de caetero eligerentur Communarii pro Communi Consilio civitatis per singula Mistera et non per Wardas . . . Sed stante ista ordinatione, crevit tumultus in populo, et parvipendebantur majores a minoribus,' etc. Hence the change in 7 Rich. II. Nevertheless, Brentano (p. cxi.) calls the ordinance of 49 Edw. III the completion of the triumph of the oppressed plebeian craftsmen over the aristocratic element. For the mode of election of the Common Council by the wards, see Liber Albus, 40, 461–463.

the crafts had no political functions, being merely economic organs, strictly subservient to the governing body of the town—the mayor, bailiffs, and common council[1]. Generally speaking, this body had the power to establish and even incorporate craft gilds and companies[2], and after such incorporation retained supervision over these associations. Scarcely anywhere had the craftsmen 'the independent government and jurisdiction over their trade[3]'; though they were allowed to regulate the latter, subject to the general control of the burghal magistrates. Under such circumstances occasional collisions between the town authorities and a single craft would naturally arise[4]; but in England these struggles did

[1] Black Book of Winch., 32, 37; Poulson, 257, 260; Thompson, Leic., 227; Seyer, Mem. of Bristol, ii. 268; Statutes of the Realm, 15 Henry VI, c. 6; Antiq. Magaz., iv. 246; Merew. and Stephens, 1676; Munic. Corp. Com., 1835, p. 2016; Ricart, Maire of Bristowe, 77, 78; Bailey, Transcripts, 41; Welfitt, Minutes, No. 19; Turner, Oxford Records, 333, 348, *et pass.*; Rep. MSS. Com., 1881, p. 402; 1887, App. iii. 87; Brand, Newcastle, ii. 339–360; Pulling, Laws of London, 72, 73-77; Thompson, Hist. of Boston, 158, 159; Rot. Parl., v. 390; Devlin, Heref. History, 24, 25. These examples may be easily multiplied. See also von Ochenkowski, 82; Ashley, Econ. Hist., 85.

[2] During and anterior to the fourteenth century, it is probable that a charter of the King was necessary for the founding of a fraternity, but in the succeeding centuries we meet with numerous examples of the establishment and incorporation of craft gilds or trading companies by the town authorities. See vol. ii. pp. 247, 248; Black Book of Winchester, fol. 37, *et pass.*; Turner, Oxford Records, 333, 335, 342; Bailey, Transcripts, 33–38; Brent, Canterb., 148; Cotton, Exeter Guilds, 117; Picton, Selections, i. 74; Rep. MSS. Com., 1881, pp. 402, 403; 1885, App. v. 320, 337; Munic. Corp. Com., 1835, p. 2636; ibid., Irel., 319, 348, 816, 1129; Thompson, Hist. of Boston, 159; Izacke, Exeter, 85; Woodward, Hampsh., i. 286; Addit. MS., Mus. Brit., 16179, fol. 17; Pulling, Laws of London, 50, 73; Harley MS. 2054, ff. 55, 56. During the sixteenth and seventeenth centuries, the crown sometimes granted a town the power to create, or 'divide itself into,' fraternities or mysteries. This is particularly true of Irish boroughs. See vol. ii. pp. 59, 250, 266; Munic. Corp. Com., Irel., 464; D'Alton, Drogheda, i. 211; Rep. MSS. Com., 1885, App. v. 337; Colby, Londond., 39.

[3] Brentano says 'they retained everywhere' this 'independent jurisdiction and government' (English Gilds, cxxiii.). In some places, such as London and Exeter, they had a limited judicial authority in petty pleas regarding their own members (Liber Cust., 123; Devon. Assoc., v. 117), but it was never independent—never beyond the supervision and control of the governing body or mayor and common council of the town. Generally speaking, their functions were inquisitorial rather than judicial; they surveyed the transactions of their trades, and saw that all defects were reported and punished.

[4] Some examples will be found in Black Book of Winchester, fol. 32 b (Weavers, 25 Henry VI); Stubbs, Const.

not assume formidable dimensions. Even in those exceptional cases, spoken of above, where the crafts actually secured a share in the government of a town, it is wrong to speak of a conflict between them and an aristocratic Gild Merchant. The governing body of the borough was rarely known by the latter name. Indeed, this appellation was more frequently applied to the aggregate of the crafts —a fact which it is now necessary for us to demonstrate in detail, as it is the key to a large part of the later history of the Gild Merchant.

Craft gilds are first mentioned during the reign of Henry I[1], about a half a century after the first appearance of the Gild Merchant. The latter included merchants proper and artisans belonging to different trades; the craft gild, at first, included only artisans of a single trade. The position of these craft fraternities in the town community during the twelfth and thirteenth centuries was different from that of the Gild Merchant. They had not yet become official civic bodies, like the 'Gilda Mercatoria,' forming a part of the administrative machinery of the town. Their existence was merely tolerated in return for a yearly ferm paid to the crown, whereas the Gild Merchant constituted a valuable burghal privilege, whose continuance was guaranteed by the town charter. Still the craft gilds occupied a more important position in the community than that of a mere private association of to-day. For with the grant of a gild the craftsmen generally secured what in Germany was called the 'Zunftzwang' and the 'Innungsrecht[2],' *i.e.* the monopoly of working and trading in their branch of industry[3]. The crafts-

Hist., iii. 618; Rot. Parl., iv. 75; Poole, Coventry, 32; Seyer, Mem. of Bristol, ii. 268; English Gilds, 299–312; Liber Cust., lxii.; Plac. de q. War., 466.

[1] Gilds of the weavers of Oxford, Huntingdon, Winchester, Lincoln, and London, the fullers of Winchester, and the cordwainers of Oxford, are mentioned in the Pipe Roll of 31 Henry I, pp. 2, 5, 37, 48, 109, 114, 144. See also the Pipe Rolls of Henry II, *passim*.

[2] 'Quandam gratiam vendendi que vulgariter dicitur inninge.' See Gengler, Codex, 287; cf. ibid., 170, 472, 473; Nitzsch, Niederd. Genossensch., 15, 16; Höhlbaum, Urkundenbuch, iii. 555.

[3] Henry II granted the 'corvesarii' of Oxford 'omnes libertates et consuetudines quas habuerunt tempore Regis Henrici, avi mei; et quod habeant

men thus associated remained in the common Gild Merchant; but the strength of the latter was weakened and its sphere of activity was diminished with every new creation of a craft fraternity, though these new bodies continued subsidiary to,

Gildam suam, sicut tunc habuerunt. Ita quod nullus faciat officium eorum in villa Oxonie, nisi sit de Gilda illa.' The 'corduanarii qui postea venerunt in villam' may belong to the Gild. For this concession one ounce of gold yearly is to be paid to the King. This charter was confirmed in 45 Hen. III and 12 Edw. II. The latter also granted: 'quod nullus scindat in eadem villa Oxonie aut suburbiis ejusdem corduanum aut corium tannatum conreatum, nec novum opus ad officium predictum pertinens in eisdem villa et suburbiis vendat, nisi sit de illa Gilda, sub forisfactura manuoperis illius.' (Archaeol. Journal, vi. 146, 147.)—The weavers of York appear to have obtained a charter from Henry II, granting them the monopoly of weaving throughout the county of York: 'libertatem habeant per cartam Henrici Regis, avi nostri, quod nullus in Comitatu Ebor' telam aliquam faciat extra civitatem nostram Ebor'... sine assensu telariorum Ebor',' etc. (A.D. 1220. Rot. Lit. Claus., i. 421.)—Henry II also granted a charter to the weavers of London: 'Sciatis me concessisse Telariis Londoniarum Gildam suam in Londoniis habendam, cum omnibus libertatibus quas habuerunt tempore regis Henrici, avi mei; et ita quod nullus nisi per illos se intromittat infra civitatem de eo ministerio, et nisi sit de eorum Gilda,' etc. (Liber Custumarum, 33.) Coke affirms that he had seen a charter of Henry I to the weavers of London (Rep., Pt. x. 30).—Abbot Hugh, of Bury St. Edmund's (1213–1229) granted the bakers of the town a gild: 'Idem abbas Gildam Pistoribus concedit, ita ut nemo qui non est frater istius Gilde, sine eorum consensu, panem facere presumat ad vendendum, sub pena xx. solidorum; et Willielmo filio Ingeredi et heredibus suis concedit hujus Gilde esse Aldermannos.' (Battely, Antiquitates, 89.)—'Allutarii et Sutores civitatis Cestrie clamant... [to have their gild once a year, and to elect an alderman and two stewards]. Clamant etiam quod nullus de arte ipsorum allutariorum et sutorum infra civitatem predictam aliqualiter se intromittat, nec artem illam in eadem civitate, subburbis (*sic*) vel libertate ejusdem quovismodo excerceret, nisi prius ab ipsis allutariis et sutoribus ad hec licentiatus fuerit... [For this liberty they are to pay 43*s.* 8*d.* annually to the Prince of Wales]. Clamant etiam quod nullus existens extra libertatem civitatis Cestrie vel extra Gildam ipsorum allutariorum sive sutorum non poterit emere tannum nec corria frimire, sine licencia sua, in dicta civitate... [Nor buy fresh skins from St. Martin's day to St. Andrew's day.]' See Lanc. and Chesh. Records, i. 123. The date is not given. —A royal confirmation of 6 Henry V to the tailors of Chester states that they had had their Gild 'ab antiquo,' in return for an annual payment to the crown; and 'quod nullus de arte eorundem Cissorum infra eandem Civitatem se intromitteret, nec eandem artem inter eos in Civitate illa quovismodo faceret seu exerceret, nisi ab ipsis Cissoribus prius licenciatus et in fraternitatem suam receptus fuerit.' (Harley MS. 2115, fol. 163.)—In a document of 1309, 'ordinaciones et statuta Gyldarum' are spoken of, 'per quas vel que libertas vendendi et emendi in dicta villa Lenn' fuerit impedita' (vol. ii. p. 155).—See also vol. ii. pp. 110, 350; Ashley, Econ. Hist., 82; Stubbs, Const. Hist., i. 474, iii. 611; Merew. and Stephens, 1511; Woodward, Hamp., i. 286, 287; Cal. Rot. Pat., 157; Cal. Rot. Orig., ii. 195 (Lincoln weavers, 22 Edw. III); Tate, Alnw., ii. 334, 339, 340; Hutchinson, Durham, ii. 21, 22; and below, p. 118, n. 2.

and under the general regulation of, the older and larger fraternity[1]. The greater the commercial and industrial prosperity of a town, the more rapidly did this process of subdivision into craft gilds proceed, keeping pace with the increased division of labour. In the smaller towns, in which agriculture continued a prominent element, few or no craft gilds were formed; and hence the old Gild Merchant remained intact and undiminished in power longest in this class of boroughs[2].

The period of the three Edwards constitutes an important epoch in the history of industry and gilds[3]. With the rapid development and specialisation of industry, particularly under Edward III, gilds of craftsmen multiplied and grew in power. Many master craftsmen became wealthy employers of labour, dealing extensively in the wares which they produced. The class of dealers or merchants, as distinguished from trading

[1] Before craftsmen formed themselves into gilds, and probably for some time after certain of them were thus united, regulations were made for them by the Gild Merchant. See vol. ii. pp. 4, 143, 144, 204–207, 223–225, 275, 290–336.

[2] See above, pp. 90–92.—Perhaps this development of the crafts explains why no Gild Merchant of London is mentioned. The expansion of trade and industry in the twelfth and thirteenth centuries was doubtless much greater there than in any other towns of England. The rapid economic growth of London probably produced a net-work of craft gilds earlier than elsewhere in England, and thus the city dispensed with a single general Gild Merchant.—The case of the Cinque Ports requires quite a different explanation. They had no Gild Merchant, and seem to have encouraged the admission of strangers to the municipal franchise and to their trade privileges, perhaps because these persons helped the townsmen bear the great burden of fitting out ships for the royal service, and because their active intercourse with other nations may have taught them a more enlightened commercial policy and broader views than those that prevailed elsewhere in English towns. For their burdens and comparative freedom from trade restrictions, see Holloway, Rye, 8, 156, 192; Larking, in Sussex Arch. Coll., iv. 214; Boys, Sandw., 522; Lyon, Dover, ii. 332, 374.

[3] Von Ochenkowski, 53; Schanz, Handelspol., i. 107, 327; Ashley, Woollen Ind., 40–44, 59; Baines, Commerce of Liv., 95; Bourne, Eng Merchants, 17; Cunningham, Eng. Industry, 170, 202, 203, and Politics and Econ., 18; Longman, Edw. III, i. 84–88; Norton, Comment., 162, 163; Rymer, Foedera, ii. 823; and cf. above, p. 51.

'For he [Edw. III] hadde a manere jelosye
To his marchauntz and loved hem hartilye.
He felt the wayes to reule wel the see,
Wherby marchauntz might have prosperitee.'
Libell of Eng. Policye, 31.

artisans, also greatly increased, forming themselves into separate fraternities or mysteries[1]. When these various unions of dealers and of craftsmen embraced all the trades and branches of production in the town, little or no vitality remained in the old Gild Merchant. In short, the function of guarding and supervising the trade monopoly had become split up into various fragments or sections, the aggregate of the crafts superseding the old Gild Merchant. A natural process of elimination, the absorption of its powers by other bodies, had rendered the old organization superfluous. This transference of authority from the ancient general Gild Merchant to a number of distinct bodies, and the consequent disintegration and decay of the former, was a gradual, spontaneous movement, which, generally speaking, may be assigned to the fourteenth and fifteenth centuries, the very period in which the craft gilds attained the zenith of their power.

The development which has just been characterized is clearly reflected by the wording of the records during and after the fifteenth century. The statute of 1 & 2 Phil. and Mary, c. 7, enacts that persons dwelling in the country shall not sell by retail within cities, boroughs, or market-towns any cloth, haberdashery wares, grocery wares, or mercery wares, except in fairs, unless 'they or any of them shalbee free of any of the Guildes and Liberties of any the said Cities, Boroughes, Townes Corporate, or Market Townes.' The older records would have said: 'unless he be in the Gild Merchant,' etc.[2] In like manner, the old restrictive clause in grants of the Gild Merchant, 'so that no one may merchandise,' etc.[3], is often replaced in later records by a prohibition, not merely against

[1] In the reign of Edward II the crafts of London were already divided into two general classes, the 'officia mercatoria' and the 'officia manuoperalia' (Liber Albus, 495). This distinction between mercantile crafts and crafts of manual occupations in London appears even more clearly during the reign of Edward III. See Statutes of the Realm, i. 379; Rot. Parl., ii. 280. Early in the sixteenth century, Armstrong complained that 'all the peple therin [i.e. London] are merchants' (Pauli, Drei Volksw. Denk., 40).

[2] For another example, see vol. ii. p. 155.

[3] Above, p. 8.

trading, but also against exercising any craft or mystery, except in the case of persons belonging to the Gild Merchant[1]. This same prohibition more commonly appears in later charters and other town muniments without mentioning the Gild Merchant, the right to trade and occupy a craft being expressly reserved to the 'freemen' of the town, or to the members of the various craft gilds[2].

In some towns where the crafts took the place of the Gild Merchant the name of the latter wholly disappeared; but in others it continued to be used, not to indicate a concrete bond of union, as of old, with distinct officers and separate administrative machinery, but only as a vague term applied to the aggregate of the crafts. Thus, in the sixteenth century, the Gild Merchant of Reading was said to be divided into five companies, each of which included many different trades[3]. An Andover record, presumably of the sixteenth or seventeenth century, speaks of the 'ordinances of the Guild of Merchants in Andever, which Guild is divided into three several Fellowships'—the drapers, haberdashers, and leathersellers[4]. In the seventeenth century the term 'Gilda Mercatoria' was applied to the eight craft fraternities of Carlisle collectively[5]. At Ipswich the Gild Merchant or Corpus Christi Gild was composed of various craft fraternities[6]. The

[1] Vol. ii. pp. 192, 266, 268, 269.

[2] Vol. ii. pp. 37, 38, 46, 56, 106, 107, 247; Tighe and Davis, Windsor, ii. 403; Izacke, Exeter, 94; Hoare, Modern Wilts, vi. 781; Simpson, Derby, i. 149; Merew. and Stephens, 1492, 1500, 1511, 1712, 2144; Wilts. Arch. and Nat. Hist. Magaz., iv. 170; Addit. MS., Mus. Brit., 16179, fol. 11; Morant, Colch., i. 83. In the seventeenth century there was a custom in Chester 'that noe man can use or exercise any trade unles—besides his freedome of the Cittie—he be alsoe admitted, sworne, and made free of the same Company whereof he desires to trade.' (Harley MS. 2054, fol. 71).

[3] Vol. ii. pp. 208, 209.

[4] Vol. ii. pp. 11, 349.

[5] The thirty-two elected from the 'Gilda Mercatoria' (vol. ii. p. 39) were taken from the eight craft fraternities. Cf. Ferguson and Nanson, 29–31. See also Merew. and Stephens, 2133, 2134.

[6] Vol. ii. p. 126; Wodderspoon, Memorials, 155, *et seq.* In very many towns there was a Corpus Christi Gild which embraced most of the crafts. On Corpus Christi day, which was often called 'the gild day,' these crafts took part in the pageant plays and in the procession of the Corpus Christi brotherhood. See vol. ii. p. 51; Surtees, Durham, iv. 20; Welfitt, Minutes, No. 22; Brand, Newc., ii. 315–359, 369–379;

totality of the twenty-four companies of Chester are likewise said to have been called 'the gild'[1]; also the aggregate of the trade fraternities at Kendal[2].

'Gilda Mercatoria' (or 'the gild,' 'the general gild,' 'the public gild,' 'the common gild,' etc.) was frequently used, especially in the North of England, to denote a general assembly whose main object was the regulation of trade, or the discussion of matters in which all the crafts were interested. Hence these 'gilds' likewise represented the aggregate of the crafts. They were, as a rule, popular assemblies of the craftsmen, or 'freemen,' as distinguished from the burghal common council. At Newcastle-upon-Tyne, in the eighteenth century, the gild, or 'court of gild,' served as a medium of communication between the crafts and the common council. At these meetings the companies stated their grievances, and entered a protest against the admission to the burghal freedom of such persons as were objectionable to them[3]. In the seventeenth

Noake, Worc., 126–134; Davies, York Records, 14, 15, and App.; Miss Smith, York Plays, pp. lxiv., etc.; Drake, Eboracum, xxix.; Poole, Coventry, 37–50; Sharp, Dissertation; Harris, Dublin, 142–150; Poulson, Beverlac, i. 215, 268, 278; North, Chronicle, 184–235; Liv. Companies Com., i. 10; Rep. MSS. Com., 1883, p. 274; 1885, App. iv. 311, 314; Nicholls and Taylor, Bristol, ii. 257; Pidgeon, Memorials, 157–159; Stoddart, Miracle Plays, 51–66; Bacon, Annalls, 164, 170, 188, *et pass.*; Blomefield, Norf., iii. 206, 448, 449; Johnson, Heref., 116–120; Norfolk Archaeology, iii. 3–18, v. 8–31; Peck, Stanford, Bk. xiv. p. 5; Antiq. Magaz., viii. 26. In Chester and some other towns the plays of the crafts took place at Whitsuntide (Ormerod, Chesh., i. 384–387). The following is one of the returns made in 1388–9 to the writs of inquiry concerning gilds:—'Societas Corporis Christi de Magna Jernemouth non est gilda, eo quod non habent prouisiones, ordinaciones aut constitutiones, nec aliquod iuramentum est inter illos prestitum, set per illorum concensum comminem [i. e. communem] inueniunt et sustentant honeste lumen circa corpus Christi annuatim in die corporis Christi; redditus et possessiones non habent, nec aliquod catallum in communi.' (Rec. Office, Misc. Chancery, Gilds, 119.) Ipswich is the only place that I know of where the Corpus Christi Gild was identical with the Gild Merchant.

[1] Hanshall, Chester, 196; Charters of Ludlow, 299. The preamble of a charter to the Mercers' and Ironmongers' Company of 1604 begins thus: 'Wheras the sayd Citty (Chester) beinge one intire body politique divided into divers members, craftes, companys, and occupations,' etc. (Harley MS. 2054, fol. 55 b).

[2] Nicholson, Kendal, 138, 141.

[3] Vol. ii. pp. 184–188, 380–382; Hutchinson, Northumb., ii. 414. The yearly congregations of the burgesses of the twelve mysteries spoken of in Queen Elizabeth's charter (Brand, Newc., ii. 608) were evidently the assemblies 'in plena gilda' often alluded to in the history of Newcastle.

and eighteenth centuries, we find 'gilds,' more or less similar to that of Newcastle, at Alnwick[1], Berwick[2], Durham[3], Hartlepool[4], and Morpeth[5].

In some towns the totality of the crafts also appear in latter times formally organized as a single fraternity with its own officers, revenues, etc. In other words, the parts into which the old Gild Merchant had resolved itself, were again fused into one body, which occupied a place in the civic polity similar, in many respects, to that of the ancient Gild Merchant. At a general assembly held in the gildhall of Devizes, in 1614, it was ordained that the Gild of Merchants should be divided into three several fraternities or companies—the Drapers, Mercers, and Leathersellers, each of which had a master and two wardens. These three fellowships were subdivided into various crafts, the Drapers, for example, consisting of the clothiers, carpenters, smiths, and thirteen other trades. This collective Gild of Merchants was already in existence in the sixteenth century, being merely re-organized in 1614. It had its own governor distinct from the mayor of the town, though one person could occupy both offices at the same time[6].

In 1616, the Mercers' Company of Faversham was established by the corporation of the town. It had a master, two wardens, several assistants, a clerk, and a beadle. No person not free of this Company was to exercise any trade in the borough. The fellowship was not to interfere with the government of the town, but was to concern itself only with measures relating to the trades or mysteries. In 1699 it was ordained

[1] Vol. ii. pp. 1–3.

[2] Vol. ii. p. 20; Munic. Corp. Com. 1835, p. 1438.

[3] Above, p. 12, n. 1; Charters of Ludlow, 299; Hutchinson, Durham, ii. 33; Munic. Corp. Com. 1835, p. 1513.

[4] Vol. ii. p. 106.

[5] Ordinances were formerly made for the various companies of Morpeth at 'public gilds' (Hodgson, Morpeth, 67). In 1835 there was no select body at Morpeth, but business was transacted in 'gilds' by all the freemen or craftsmen (Munic. Corp. Com. 1835, p. 1629). —At St. Alban's in the seventeenth century there was a general assembly of the wardens of the companies and the freemen four times a year, to regulate the affairs of the crafts and to admit freemen (Merew. and Stephens, 194); but the term 'gild' does not seem to have been applied to these meetings.

[6] Vol. ii. pp. 54–56.

that in the future the mayor of Faversham for the time being should be master of the Company; that the wardens should be chosen from the town jurats, four of the assistants from the common council of the borough, and the other four from the freemen of the Company. Membership of the Company was distinct from the freedom of the town [1].

In the sixteenth and seventeenth centuries the tailors, mercers, drapers, cappers, hatters, glovers, and skinners of Ludlow were united in an association, which after 1710 was called the Stitchmen. It appears to have had supervision over the whole trade of the town; and continued in existence till 1862. The officers of the society were the 'six-men' and two stewards [2].

As the statute of 1 & 2 Philip and Mary, prohibiting persons dwelling in the country from retailing in boroughs, was not properly observed in Preston, the mayor, bailiffs, and burgesses deemed it expedient, in 1628, to establish the Company of Drapers, Mercers, Grocers, Salters, Ironmongers, and Haberdashers, for the maintenance of the said statute in Preston [3].

At a Court of Common Council held at Wallingford, January 30, 1663, it was ordained that all trades within the borough should consist of one body, to be called the Company of Drapers. In 1667 it was re-established, being created 'one body corporate.' In 1701 'the mayor, burgesses, and commonalty ordained that all persons who were then using, or should thereafter use, any art, mystery, or occupation in the borough or the liberties thereof, should be a body corporate, guild, or fraternity, by the name of the master, wardens, and assistants of every art, mystery, and occupation used in the borough and liberties thereof, and have succession and a common seal [4].'

At Walsall, in the fifteenth century, the crafts formed them-

[1] Vol. ii. pp. 89–91.

[2] Arch. Assoc., Journal, xxiv. 327–334.

[3] Vol. ii. p. 199.

[4] Vol. ii. pp. 247, 248; Hedges, Wallingford, ii. 234, 237.

selves into a Gild, at the head of which were three wardens, who exercised considerable control over the trade of the town[1].

In Londonderry, in 1735, a mercantile fraternity was formed, consisting of thirty-six tradesmen taken from twelve occupations. Their functions were to regulate trade, correcting frauds in the same, and to prevent strangers from trading[2].

The most interesting and instructive example of such consolidation of crafts into one body is furnished by the town of Dorchester. In 1629 a charter of Charles I intrusted the general government of the borough to a corporation, consisting of the mayor, two bailiffs, six aldermen, and six burgesses; these fifteen capital burgesses constituted the civic common council. The charter also created a second corporation, for the increase and supervision of the commerce of the town, namely, 'the governor, assistants, and freemen of the borough of Dorchester.' This second body had its own common council of twenty-four members. The governor, together with four assistants chosen from the twenty-four by the freemen, and five other assistants chosen by the mayor and capital burgesses, was to hold four courts or convocations yearly, at which persons were to be admitted to the freedom of the borough, and other business of concern to the freemen was to be transacted; and four other courts every year for the regulation of trade, and for the government of all mysteries and occupations. If any doubt should arise in the execution of these functions, the matter was to be referred to the mayor and capital burgesses. In 1630 a special court of the governor, assistants, and freemen decreed that the tradesmen and handicraftsmen of the borough should be divided into five companies—the Merchants, Clothiers, Ironmongers, Fishmongers, and Shoemakers and Skinners. Each of these consisted of many different crafts. It is evident that this complex

[1] Vol. ii. p. 248.

[2] Munic. Corp. Com., Irel., 1129; Colby, Londond., 125.

organization exercised the functions of the ancient Gild Merchant[1].

Thus whether as the totality of the crafts, or as the meetings of the latter in their collective capacity, or as their reorganization into a single association, the Gild Merchant was tantamount to, or was replaced by, the aggregate of the craft fraternities.

This relation of the later craft fraternities to the Gild Merchant, or the displacement of the latter by the former, presents itself in still another aspect when we inquire into the signification of the word 'freemen' of a town. The expressions 'freemen' and 'being in the freedom' often became synonymous with the older terms 'gildsmen,' and 'being in the Gild Merchant.' In the records of Totnes, for example, it is expressly stated that those entering the Gild were 'commonly called freemen[2].' The brethren of the ancient Gild Merchant, as has been shown, were those who enjoyed

[1] Vol. ii. pp. 56–58, 365–370.—At Coventry the crafts were also united into one body. In the fifteenth century ordinances were made 'bye a generail Counsel of all the Crafte and Craftes' or by 'a consell of alle the fyllyshape of the crafts' (vol. ii. p. 51).—The silver mace of the Cork gilds, which seem to have been likewise associated into one union, is still in existence (Hist. and Archaeol. Assoc. of Irel., 1886, vol. vii. pp. 341–361).—The amalgamation of all the crafts of a town into two or more crafts was also quite common. In 1667 those of St. Alban's were divided into two companies, the Mercers and Innholders (Munic. Corp. Com. 1835, p. 2922). In 1573 all the freemen of Gravesend were 'nominated into two Companies or Fellowships,' the Mercers and Victuallers (Cruden, Gravesend, 195, 197, 198). In 1579 the freemen or craftsmen of Kingston-upon-Thames were divided into four companies (Munic. Corp. Com. 1835, p. 2898); those of Axbridge, in 1624, into three companies (vol. ii. p. 12). At Ipswich, 18 Eliz., the trades were drawn up into four fellowships, each with many subdivisions (vol. ii. p. 130).

[2] In 1663 certain persons were summoned to compound for using the liberties 'of the guild merchants,' in buying and selling, not being freemen of Totnes; and certain sums were received of 'sutche as have been taken intoo the Company of Gwilde Marchants, comenly called free men' (Devon. Assoc., Trans., xii. 323, 324). In like manner at Andover the 'freedom' ('libertas') was equivalent to 'gilda mercatoria;' and at Winchester 'to be fre' was tantamount to membership of the Gild Merchant (vol. ii. pp. 7–11, 257, 310–325, 333). In 1372 a person entered the Gild of Guildford 'ut liber sit' (vol. ii. pp. 101, 103). See also vol. ii. pp. 43–46, 48, 60, 97, 105, 106, 109, 110, 121, 131, 143, 144, 178, 189, 193, 195, 213, 239, 242–247, 263, 264, 270, 346, 358; Munic. Corp. Com. 1835, p. 898; Gentleman's Magaz., 1851, xxxv. 262; Turner, Oxford, 348.

freedom of trade ('libertas emendi et vendendi'); the later freemen occupied the same position in most towns, comprehending all who were allowed to trade freely[1]. But these freemen in many boroughs were practically co-extensive with the brethren of the craft fraternities, the freedom of the town being obtained mainly or solely through the medium of the crafts. In these places the civic freedom was in conception distinct from, and paramount to, that of the crafts; but the two franchises became interdependent or intimately connected, the one being a necessary condition for the attainment of, or constituting a legitimate claim to, the other[2].

[1] Vol. ii. pp. 37, 266, 268; Welfitt, Minutes, No. 24; Munic. Corp. Com. 1835, pp. 968, 1417, 1386, 1526, 2898; Merew. and Stephens, 152, 194; Cruden, Gravesend, 194, 195.

[2] The freedom of the town was obtained solely through the intervention of the craft gilds in Alnwick, Carlisle, Durham, Morpeth, Oxford, Windsor, Wells, and probably some other boroughs. See vol. ii. p. 193; Munic. Corp. Com. 1835, Rep. p. 19, and App. 1368, 1417, 1471, 1513, 1628, 2016; ibid. 1880, p. 603; Jefferson, Carlisle, 286; Ferguson and Nanson, Carl., 227; Tighe and Davis, i. 652; Charters of Ludlow, 299; Merew. and Stephens, 2133, 2137; Hutchinson, Durham, ii. 33; Mackenzie, Northumb., i. 192–196. In Axbridge, Norwich, Gravesend, and St. Alban's, likewise, all freemen or citizens were enrolled in the trade companies (vol. ii. pp. 12, 189, 190; Blomefield, Norf., iii. 131; Cruden. Gravesend, 195; Munic. Corp. Com. 1835, p. 2922; Merew. and Stephens, 194). The interdependence of the town freedom and that of the crafts is well exemplified by the following extract from the charter of 1 Edw. IV to the tailors of Exeter: 'Et quod nullus infra libertatem illam ciuitatis predicte mensam vel shopam de mistera illa teneat, nisi sit de libertate ciuitatis illius, nec aliquis ad libertatem illam pro mistera illa admittatur, nisi per predictos magistrum et custodes [i.e. of the craft] vel successores suos testificetur quod bonus, fidelis et idoneus sit pro eisdem.' If the officers of the craft present such a person to the mayor, the latter must admit him to the civic freedom (Rec. Office, Conf. Roll 19–23 Eliz., m. 18; Engl. Gilds, 301, 306). For somewhat similar regulations regarding the tailors of Bristol and Dublin, see Nicholls and Taylor, Bristol, ii. 259; Munic. Corp. Com., Dublin, 274. Lucas in his Liberties and Customs of Dublin says: 'Every man who prosecutes or takes out his freedom . . . must come free through some or other of the gilds, but obtaining his freedom of a gild, he must pass his bond to prosecute his freedom of the city, without which he cannot be sworn free of the gild' (Egerton MS., Mus. Brit., 1772, fol. 43; but cf. Parl. Papers, 1833, vol. 13, pp. 207, 213; and Munic. Corp. Com., Dublin, 18). From the time of Edward II citizenship of London has been acquired mainly but not exclusively through the crafts. In 6 Edward II an ordinance was passed prohibiting the mayor and aldermen from admitting to the freedom of the city any person whose character or status was not well known, without the assent of the craft which he proposed to follow. By a later enactment (before 12 Edward II) the surety of six men of the craft to which the applicant for citizenship belonged, was required; an alien was to

To fully understand this development we must recall to mind the two great transformations that occurred in English municipalities during the fourteenth and fifteenth centuries, namely, the expansion of trade and the growth of a select governing town council. The economic development gave the crafts a more important position in the town community, and materially altered the old qualifications of burgess-ship. In the larger boroughs commerce and industry became the exclusive occupation of the townsmen[1], the 'rus in urbe'

be admitted to the freedom only at the Hustings, and by the surety of six men of the craft which he purposed to exercise; but if he belonged to no particular craft, then the assent of the whole community of the city was necessary for his admission. See Liber Albus, 495, 658; Liber Cust., 269, 270; Riley, Memorials, 151; Norton, Comment., 91, 106, 107, 244, 247, 252; Guildhall Records, Letter-Book E, fol. 4; Pulling, Laws of Lond., 62, 63, 71; Loftie, London, 113, 114. Brentano, p. cxi., perverts the truth by adapting the facts to his theory. The following extracts give the relations of the Companies to the civic franchise of London in the nineteenth century. 'No one can become a Freeman of the Corporation but by previous admission into these [89] Companies, except in some cases in which the honorary Freedom is presented by a formal vote of the Corporation. When, by birth, apprenticeship, purchase or gift, a person has become a member of a Company, he has acquired an inchoate right to the Freedom of the Corporation, and he is admitted on proving his qualification, and on paying certain fees to the Corporation,' etc. (Munic. Corp. Com. 1837, Rep., 5). 'Till the year 1835 the freedom of the City could only be obtained through a livery company. In that year the Municipality of London decided to confer it irrespective of the Companies on certain terms through the City Chamberlain. But the freemen of the Companies have still the right to claim as such the freedom of the City,' etc. (Liv. Comp. Com. 1884, i. 23).

But here as elsewhere throughout this chapter, my statements concerning the craft fraternities apply only to certain categories of towns; the diversity of custom was so great that general rules cannot be enunciated. In many boroughs the freedom of the crafts and the municipal franchise were clearly distinct; and in others (e.g. Colchester and Yarmouth) the craft associations either did not exist at all, the Leet continuing to regulate trade, or constituted an insignificant element of the burghal polity. See vol. ii. pp. 46, 91, 186, 187; Thompson, Hist. of Boston, 158; Thompson, Leic., 227, 228; Brand, Newc., ii. 366; Munic. Corp. Com. 1835, pp. 967, 968, 1647, 2898; ibid., Irel., 592; Merew. and Stephens, 1830; May, Evesham, 488, 489; Harley MS., Mus. Brit., 2104, fol. 348; Antiq. Magaz., vi. 29; Cutts, Colch., 155.

[1] Hence the later definitions of a borough and a burgess. Brady describes the latter as a tradesman dwelling in a burgh for the sake of traffic (Treatise, 3, 19). 'Traffick is the very essence [of a borough]. and by it the Being and Vitalls of a Burgh or City is mantained' (Skene, Memorialls of Burghs, 94). 'Les Citees et Borghs sont noblement enfraunchez . . . pur sustenance de loial Merchaundise, dont sourt pur la greindre partie la Richesce et le comun Profit de toutes Roialmes' (Rot. Parl., ii. 332, 50 Edw. III).

gradually vanishing. The ancient burgage tenure[1] — the natural concomitant of the old burghal communities, in which agriculture rather than capital and industry played the chief role—was no longer connected with citizenship. The latter was gradually transformed into a personal privilege, without qualification of property or residence, being obtained by birth, apprenticeship, purchase, gift, or marriage[2]. Payments of scot and lot became the pre-eminent obligation of burgessship; and the right to trade or exercise a craft became its pre-eminent privilege. Thus the freemen—who in many places were identical with the burgesses—were the successors of the brethren of the ancient Gild Merchant. The old popular Leet government of the borough was superseded by a select governing town council, to whose members the name 'burgess' was, in later times, often restricted. To this close corporation the crafts became a powerful and useful auxiliary, often even an effective check to its extravagances; but they did not succeed in supplanting or dominating over it. The select body was an anomaly, which, with the aid of the royal prerogative, prevented the crafts from securing the paramount position to which their wealth and numbers entitled them. Whatever power they did obtain, whether as potent subsidiary organs of town government for the regulation of trade, or as the chief or sole medium for the acquisition of the municipal freedom, or as integral parts of the common council, was, generally speaking, the logical sequence of a gradual economic development, and not the outgrowth of a revolutionary movement by which oppressed plebeian craftsmen endeavoured to throw off the yoke of an arrogant, patrician Gild Merchant.

[1] See above, p. 71.

[2] For these qualifications, especially apprenticeship, see vol. ii. pp. 1, 67, 193, 259, 266, 268, 275; Tighe and Davis, Windsor, ii. 403; Parker, Wycombe, 50, 53; Gribble, Barnstaple, ii. 247; Welfitt, Minutes, Numbers 24, 37; Izacke, Exeter, 39; Munic. Corp. Com. 1835, p. 2016; Norton, Comment., 106; Tenth Rep. MSS. Com., App. v. 438; Liber Albus, 383, 665; Riley, Memorials, 397; Picton, Self-gov., 686; Tate, Alnwick, ii. 231, 232, 237; Pidgeon, Memorials, 151; Tomlinson, Donc., 169.

CHAPTER VIII.

Later Mercantile Companies: Merchants, Staplers, Merchant Adventurers.

The Gild Merchant is often confused with various other kinds of gilds[1]. In the preceding pages I have attempted carefully to distinguish it from the purely private social-religious fraternities and from the craft gilds. Equal care must be taken to avoid confusing it with the later mercantile associations, above all, with the various companies of merchants, merchant staplers, and merchant adventurers.

During the fourteenth and fifteenth centuries we find the old Gild Merchant resolved into two general classes of crafts, mysteries, arts, or occupations, namely, those wholly of a mercantile character, and those in which the artisan still figured prominently. The former consisted exclusively of dealers, who bought and sold what others made or produced; while the latter embraced workers, who either did not sell any wares at all or only such as they manufactured with their own hands. The mercantile societies may, in turn, be subdivided into those that dealt in only one particular line of goods, such as the drapers, leather-sellers, vintners, etc., and those that traded in a variety of articles, namely, the common or ordinary merchants, whose companies seem, in most cases,

[1] Merewether and Stephens, 385, 559, 839, 2369; Coke, Reports, Pt. x. 30; Walford, Antiq. Magaz., i. 301; Insur. Cyclop., v. 347; Herbert, Liv. Comp., i. 1; Reliquary, v. 67; Causton, Elections, lxxix., lxxxii.

to have been made up mainly of grocers and mercers[1]. The old Gild Merchant embraced both merchants and artisans; the later Company of Merchants contained merchants only. In some places, where the mercantile crafts were not

[1] A mercer was originally a merchant who dealt in small wares, like the ancient German 'Krämer.' At first there was probably no marked difference between retail mercers and retail merchants; these terms often seem to be used synonymously in the sense of ordinary traders or general dealers. But the term mercer afterwards became restricted to what Americans call 'dry-goods' (haberdashery, etc.), and still later chiefly to silk wares. See Riley, Liber Cust., 814; Skeat, Dict., 364; Grimm, Wörterbuch, 'Krämer'; Höhlbaum, Urkundenbuch, Gloss., vol. iii. 562; Ancren Riwle, 455; Bracton, De Legibus, i. 48; Rot. de Lib., 168; London and Middlesex Arch. Soc., iv. 133; Ashley, Woollen Ind., 68. The following passages throw some light upon the nature of the mercer's occupation:—'Mercator qui vulgo mercennarius dicitur' (Höhlbaum, Urkundenb., iii. 562). 'Marcenarius, qui in nundinis stabulum habet, de quo quod portat ad collum suspensum, quando novissime exit, debet obolum' (ibid., iii. 397, A.D. 1252). 'Des menues ou petitz merceries come soie, fil d'or et d'argent . . . de naperie, de lynge tielle, de canevas et d'autres tieux grosses merceries, et auxint toutes maneres d'autres grosses marchandises,' etc. (Rot. Parl., iii. 47, 2 Rich. II). 'Trop de Marchandise, come en grocerie, mercerie et peltrie,' etc. (Ibid., iii 126; cf. ibid., iv. 352.) In 1486 the Mercers' Company of Southampton fined a man for hawking (Davies, Southamp., 275). A.D. 1510–11. 'De finibus mercenariorum pro correctione habenda de *lez hawkers*, iii.*s.* iiii.*d.*' (Records of Nottingham, iii. 104). Feb. 19, 1576–7. 'No Draper, Mercer, Haberdasher, Hatseller, Grocer, petty Chapman, or other Retailer and Victualler of all sorts—the like whereof are not made or traded in this Toune only excepted—shall shew or sell upon the market and weeke day, except faire dayes, any of the before mencioned wares upon forfeiture, after reasonable admonition, [of] all such wares,' etc. (Tighe and Davis, Windsor, i. 642, 643). An ordinance was made at Kendal, March 24, 1635, that woollen drapers shall sell all sorts of woollen cloth including hats and bands, that the mercers and haberdashers of small wares shall be accounted as one trade, that grocers shall sell grocery wares, apothecary wares, dying stuffs, and whatsoever is sold by the hundredweight and gallon measure; and that linen cloth shall be used in common until some will undertake to manage that trade (Rep. MSS. Com., 1885, App. iv. 317). In a document, dating probably from the second half of the sixteenth century, 'mercerie and all other silke wares' are referred to (Addit. MS., Mus. Brit., 18913, fol. 81). See also the Statute 1 and 2 P. & M., c. 7.

'Grocer' meant originally a wholesale dealer, according to the implied definition in the Statutes of the Realm, 37 Edw. III., c. 5: 'les Marchauntz nomez grossers engrossent totes maneres des marchandises vendables, & le pris de tiele marchandie levent sodeenement deinz le roialme, mettantz a vent par covyne & ordinance entre eux faitz—appelle Fraternite & Gilde de Marchaunt—les marchandises qe sont plus cheres, & les autres en repose tanqe au temps qe chierte ou defaute soit dicelles.' Probably by the early part of the fifteenth century their dealings became limited to grocery as now understood. See Liber Custum., 730; Promptorium Parvulorum, 213; Rot. Parl. iii. 662; Skeat, Dict., 245.

numerous, the company of merchants included both general dealers and such as traded in only one kind of wares. In large towns like London, on the other hand, production was so extensive, and the sub-division of occupations so great, that there was no company of merchants at all, but grocers, mercers, drapers, etc. had their separate associations[1].

Generally speaking, the company of merchants supervised the monopoly of trading in such wares as were not produced or dealt in by the other crafts. Hence it often succeeded to a large part of the functions of the old Gild Merchant, though there seems to be no genetic connection between the two. In most cases, it was simply one—generally the most important—of the many craft unions that superseded the ancient Gild Merchant.

These companies of merchants were not very numerous, and their organization differed very much in different places. Hence it will be expedient to discuss in detail a few typical

[1] Thus at York in 1415 there were fifty-seven crafts, the spicers, drapers, mercers, and fifty-four others (Davies, York Records, 233–236). In 1448 there were in Coventry companies of tailors, drapers, mercers, and more than twenty other craft fraternities (Poole, Coventry, 33, 34, 36). The mercers existed as a separate society much more frequently than the grocers. Thus we find the former, among other places, at Gravesend, St. Alban's, Newcastle, Southampton, Kingston-upon-Thames, Sandwich, Hereford, Evesham, Wells, and Wallingford. See above, p. 123, n. 1; vol. ii. pp. 380, 385; Johnson, Customs of Heref., 118; May, Evesham, 488; Davies, South., 275; Rep. MSS. Com., 1872, p. 332; 1876, p. 569; 1877, pp. 576, 577; Munic. Corp. Com. 1835, pp. 254, 1368. The mercers were often united with other crafts, especially the grocers, haberdashers, or apothecaries. Thus the mercers' company of Durham consisted of mercers, grocers, haberdashers, ironmongers, and salters (Munic. Corp. Com. 1835, pp. 1511–1512; Hutchinson, Durham, ii. 29). The mercers of Shrewsbury included grocers, ironmongers, and goldsmiths (Munic. Corp. Com. 1835, p. 2016). At Gateshead the mercers were united with the drapers, tailors, and some other trades (ibid., 1525). In Chester the grocers, ironmongers, mercers, and apothecaries formed one company (ibid., 2636). At Kendal the mercers, drapers, haberdashers and grocers were also thus united in 1638 (Rep. MSS. Com., 1885, App. iv. 300). The mercers and woollen drapers of Oxford were incorporated as one fraternity in 1572 (Turner, Oxf. Records, 342, 348). In 1779 there were in the town of Gloucester a Company of Mercers and eleven others; the former included—besides mercers—apothecaries, grocers, and chandlers (Antiq. Magaz., iv. 246). See also above, p. 119, n. 1; and p. 121; vol. ii. pp. 12, 55, 56, 89, 199, 208, 349. For examples of mercers united with merchants, see below, p. 139, n. 2.

examples, rather than to attempt to lay down any rules concerning their general constitution and functions.

The Company of Merchants of Alnwick is, I surmise, still in existence. Its records begin in 1582[1]. It was governed by an alderman and proctors[2]. In 1582 there were sixteen members; in 1789, thirty-two; in 1868, nine[3]. In 1603 it was ordered that 'none of the fellowshipp shall buy skinnes, unless it be with the alderman's license, before the tyme of the yeare that they ought to be sold at, upon paine of xx.*s.*' In 1609 the society sent searchers 'for shepe skynnes and goate skynnes, to goe unto the countrye upon the charges of the fellowshipp[4].' In 1612 it was enacted that 'no alderman whatsoever nor any other of the fellowshipp in particular, unless the whole fellowshipp be consulted thereunto, shall gyve any lycence and leave to any foryners and strangers to sett out on the Markett dayes, which is prejudiciall to the whole fellowshipp, of the payne and penaltie for every such offence xl.*s.*'[5] In 1635 it was agreed 'that the alderman and two of the company shall forbid the pedleres and petty chapmen to sell, or sett forth or show to be sold, any sort of grosseries or maynchester [i. e. Manchester] wares upon any Markett daye or any other daye, either in the Markett or [in any] house in the town; and yf they shall refus so to doe, it is agreed by the whole company to take distress or distresses from every offender,' etc.[6]

Many other similar enactments show that the Company of Merchants of Alnwick were general shop-keepers, who dealt mainly in mercery and grocery wares. In 1657 four persons were prosecuted because they 'dayly sell all sorts of Marchandise in the oppen market.' In 1661 the Company resolved 'to answer, both in purse and person, against all opposition of the Chepmen and Pedlars and all others that seekes to wrong the fellowship.' In 1673 and in 1686 many such persons

[1] Tate, Alnwick, ii. 321.
[2] Ibid., ii. 321–323.
[3] Ibid., ii. 321.
[4] Ibid., ii. 324.
[5] Ibid., ii. 326.
[6] Ibid., ii. 325.

were found guilty of retailing grocery and mercery wares. At the Quarter Sessions held in 1682 three men of Alnwick were indicted 'for exercising the mystery and calling of a merchant within the borough, not being freemen or having served an apprenticeship for seven years.' Again, in 1683 three others were indicted 'for exercising the mystery or occupation of mercers in the burg of Alnwick'; and in 1684 seventeen persons were indicted for the same offence. In 1685 Thomas Hardy of Alnwick and twelve others were indicted for exercising the art of grocer; and two indictments were found against James Davison for trading both as mercer and grocer. The Company spent considerable money in prosecuting such delinquents at the Quarter Sessions[1]. In 1686 Henry Wilson, of Rennington, bound himself 'not to sell any grosser goods or mercery goods, in what kind soever, towbaco or pipes, brandy or watters, or any other merchant goods, but what he shall buy of Joseph Falder or other merchants belonging to the fellowship of merchants in Alnwick.' James Calhoun bound himself in 1718 'not to sell grocery goods or any broad cloths, druggets, buttons, mowhairs, buckram, canvas, stay tape, or sewing silk.' In 1717 Mark Donell bound himself 'not to exercise the trade of mercer or grocer, not having served his apprenticeship to it (excepting thread, laces, inkles, tapes, ferretyngs, garters, and caduces), unless he hereafter serve his time.' The last attempts to enforce their monopoly were made by the Company in 1771, when they successfully prosecuted two persons for using the art or mystery of grocer[2].

Besides the Company of Merchants there were formerly ten others in Alnwick—the cordiners, glovers, tanners, weavers, smiths, wrights, butchers, tailors, fullers, and coopers[3].

[1] Tate, Alnwick, ii. 325, 326.

[2] Ibid., ii. 327. For some account of this Company in 1880, see Munic. Corp. Com. 1880, p. 603, *et pass.*

[3] Tate, ii. 321, 328–350. Most of these companies were still in existence in 1880. See the Report mentioned in the preceding note.

The still-existing Company of Merchants of Carlisle possess records which go back to the sixteenth century [1]. These merchants included 'mercers, drapers, grocers, apothecaries, etc., in fact, all traders in Carlisle who were not actual manual workers [2].' It was governed by two masters, two wardens, and two under-masters [3]. In 1698 there were forty-four members; in 1706, only thirty-three [4]. The following are a few of the many ordinances made by this fellowship.

A.D. 1624. 'None to sell sickles or sythes or anie other merchantize suffred to be sould by strangers, but onelie at the two faires. None fforyner or stranger suffred to sell anie merchandyse but in tyme of our faires. None to [? buy or sell] cottons or frise under couller ffor Scottes men . . . . All those that doe trayde to pay euery quarter daye twelve pence. No Scotes man suffered to retaile eyther in market or houses. . . . An acte against George Rumley for refuseing the merchant dinner [5].'

A.D. 1641. 'John Watt hath submitted himselfe to the censor of this occupation to undergoe and pay what they shall set done [i.e. down] the next quarter day for his default in keeping unlawfull weights and measures, which he hath confessed [6].'

A.D. 1651. 'Whereas it is ordered this quarter day y^t^ severall persons sell waires in y^e^ street to y^e^ great prejudice of this trade. Therefore we raquire y^e^ undermasters Edu[ard] Monke and Richard Glaister to take notice of such persons as doe sell waires in y^e^ streete, y^t^ they may be able to informe the leete court juraye next to be houlden, and see to present the same [7].' This ordinance was made September 26th. On

[1] Ferguson and Nanson, Munic. Records of Carlisle, 88–89.

[2] Ibid., 89. 'The merchants' gild . . . included the shopkeepers, some grocers and seedsmen, other drapers, haberdashers, apothecaries, etc.' (Ibid., 28.)

[3] Ibid., 106, 107, 111.

[4] Ibid., 92, 93.

[5] Ibid., 94, 95.

[6] Ibid., 109. The oath of those admitted to the Gild began thus:—'You shall well and truely use, exercise and keepe true weights and measures for buying and selling, without any maner of fraud, cossenage, or deceit.' (Ibid., 91.)

[7] Ibid., 111.

October 11th of the same year the following passage occurs in the court leet records:—'Wee present John Boweman, being noe freeman of this city, for keeping open shopp and selling merchant wares by retaile, as well upon the week day as market day, contrary to the priviledge of this citty, not having compounded with the companie of merchants; and therefore doe amercy him 5li[1].'

July 2, 1652. 'Complaint being made this quarter daye y^t Richard Monke was partner with William Oliuant, a forriner, in buy[i]ng and selling a can of vinegar, th[creupon] y^e said Richard being questioned for the same doth acknowledge the truth of y^e information and submitts himselfe; the sentence of y^e coort is this, y^t upon confession he is acquitted for y^e same, promising neuer to doe y^e like, it being y^e first fault, & he indyed [i.e. indeed] ignorant of our orders.' In 1656 Peter Norman is charged with a similar offence as to a bargain of herring, and in 1659 as to some wool[2].

July 4, 1656. 'It is ordered by the consent of the whole company that noe brother of this company shall at any time suffer either Scotsmen or others to retayl in his house any flax, onion-seed or any other comoditie which may be preiudeciall to the company of merchants,' etc.—'It is ordered by the consent of the company of marchants aforesaid that noe brother of this trade shall joyne as partner with any stranger or forraigner in the trade and occupacion of a marchant, either within the cittie or libertyes thereof. Neither shall any brother of this company give any account of proffitt or gaine to any stranger or non-freeman concerninge their trade, upon penaltie that euery brother that offends herein to forefeit for the benefitt of the trade the sume of ten pounds[3].'

April 7, 1741. 'It is ordered that Mr. Jos. Potts, James Jackson, H. Pearson, and the undermaster of this guild for the time being, carry on a prosecution against Richard

[1] Ferguson and Nanson, Munic. Records of Carlisle, 292. [2] Ibid., 111.
[3] Ibid., 101, 102.

Hodgson for exercising the trade of a mercer, not having served an apprenticeship.' There are many similar entries in the records; the culprits were most frequently guilty of exercising the trade of a grocer[1].

Besides this Company of Merchants there were seven other craft fraternities in Carlisle—the weavers, smiths, tailors, tanners, shoemakers or cordwainers, skinners and glovers, and butchers[2].

The Company of Merchants of Dublin is even more interesting than those of Alnwick and Carlisle. In 1451 Henry VI granted a charter of incorporation to the Holy Trinity Gild or the 'Gild of the art of Merchants of the city of Dublin.' Its chief officers were to be two masters and two wardens. No foreigner was to buy by retail or wholesale in the city except of the merchants of Dublin[3]. In 1577 Queen Elizabeth conferred upon the fraternity the monopoly of buying and selling all kinds of wares brought to the town excepting victuals. Foreigners were not to buy from or sell to any persons except merchants of the Gild; and they were to expose their goods for sale in the common hall only. Such wares were not to be removed from the hall within forty days without the special permission of the masters and wardens of the society. All goods of foreigners sold elsewhere than in the common hall were to be confiscated by the officers of the Gild[4].

The chief functions of the two masters were to preside over the four quarterly meetings[5], and to see that the ordinances of the fellowship were duly observed and that 'Trynnyte daye be worshipped and kept.' The two wardens collected the fines and quarterly dues[6]. In 1657 a council of twenty-four was appointed to manage the affairs of the fraternity; but the members at large continued to attend the quarterly

[1] Ferguson and Nanson, Munic. Records of Carlisle, 116.

[2] Ibid., 23–40, 125–271. Ferguson and Nanson's work contains the fullest collection of printed ordinances relating to English crafts.

[3] Vol. ii. pp. 60–62.

[4] Vol. ii. pp. 62–65.

[5] This was the usual number of meetings held during the year. See vol. ii. pp. 68, 70, 83.

[6] Vol. ii. pp. 70, 71.

meetings. In 1679 it was ordered that only sixty of the brethren chosen by the council should be present at these quarterly assemblies. At this date there were about four hundred members [1]. In 1749 it was stated that it had been customary for the masters and wardens, in pursuance of an order made at every Michaelmas quarterly meeting, to appoint the council every year, and that they had always named the Lord Mayor, all the aldermen of the city, the sheriffs and ex-sheriffs, the masters and wardens, and all ex-masters and ex-wardens, together with thirty-one other brethren of the fraternity, to be members of the council. It appears that this council had usurped the right of electing the masters and wardens, and of returning persons to represent the Gild in the common council of the city [2].

In 1573 it was ordered that 'no one of any other corporation [i.e. fraternity or gild] shall be admitted a brother of this Gild until he withdraw from the other body [3].' Many members of these other craft fraternities [4] were also shopkeepers [5]; but they retailed only one particular line of wares and were not to 'sell all sortes of merchandize [6].' The Holy Trinity Gild was by far the most important fraternity in Dublin. It contributed two-thirds of the town cess in the reign of Elizabeth; the other gilds, the remainder. It also frequently lent money to the civic authorities [7].

An interesting feature of the Dublin Merchants' Company was its supervision of the 'common town bargains.' These were cargoes purchased by certain civic officials in the name of the town, and then distributed in shares among the merchant burgesses, no one being allowed to buy wares landed in the port, unless the municipal authorities refused to purchase them. This seems to have been quite a common practice

[1] Vol. ii. p. 78.
[2] Vol. ii. pp. 82–84.
[3] Vol. ii. p. 76.
[4] There were twenty-four craft fraternities besides the Holy Trinity Gild (Munic. Corp. Com., Dublin, 13).
[5] Vol. ii. pp. 78, 79, 80, 81.
[6] Vol. ii. p. 78. Wine, salt, coal, and iron were, as we shall soon see, the most important commodities in which the Dublin Company of Merchants dealt.
[7] Vol. ii. p. 78.

in England[1], Ireland[2], Wales[3], and Scotland[4]. It evidently

[1] For full details concerning the 'town bargains' of Liverpool, see vol. ii. pp. 148–150. In Plymouth it was formerly customary to buy cargoes 'on the town account,' and shares were allotted to the freemen. The following entry seems to relate to these transactions:—'1596–7. Item, received of Mr. Fownes for monies gayned uppon sale of Corne this yere, cl. *li.*' (Rep. MSS. Com., 1885, App. iv. 539.)

[2] The following town ordinance of Waterford was made in the year 1433–4: 'Also it was ordayned and grauntid by commene assente in the saide yere that the Maire and bailiffs duryng the yere sholde be commene bieres [i. e. buyers] of al merchandise commyng unto the said citie, and to distribute the same upon al citsains and commynalte of the same, as they shal see behouffull.' (Rep. MSS. Com., 1885, App. v. 295.) Again: 'In the foresaid day and yere [1492-3], forasmuch as Maire and balifs bene chosen to be commene biers of all marchandises commyng to the citie, and bene distributers of the same upon the commynes for this yere, it is enacted and ordayned by commene assent that no manere of man duelling within the citie or suburbes shall goo againste ony shippe or shippes estrangers that shall aryve within this haven, with ony manere of marchandise, and if it fortune ony parson or parsones to be att Passage or in ony othre place within this haven att th'arryving into the same of ony such shippe or shippes, that then no such parson nor parsons shall goo aborde them, nothre bye, syll, nor make bargaine with them, nor to goo theddre [i. e. thither] to th'ende to awaite uppon the commyng of shippes into this haven, by no manere of colour, except such parson or parsons be send theddre by Maire and balifs. And who so ever do the contrary herof, and therof to be convicted, shal pay xl.s. for a fyne, without ony grace, and lose his fredome.' (Rep. MSS. Com., 1885, App. v. 323.) In 1522–3 dissensions having arisen in Waterford concerning 'the bying of mariner portages' and other haberdashery and petty wares brought by merchant strangers to the city, it was enacted 'that all manere marchandis, what so ever kynde thei be of, and mariner portages commyng in ony shippe to the citie that is or shall be devydable, shal be bought by the Maire and balives, which bene commene biers for tyme being, and to distribute the same on fremen of the citie (the propre goods of free citisains and inhabitants only excepted). And that no fre citisaine nor inhabitant shall procure or attempt to bye any manere of marchandis so commyng to the citie withoute a speciall licence hadde of the Maire for tyme being.' (Ibid., 327.) A civic statute of Galway of the year 1524 ordered that no one of the town should buy any goods from strange ships without the consent of the Mayor and other officers. 'And, further, it is orderid that if any man engrosse or profer more to anny man or stranger for his wares then the Mayor and Counsaill did offer or profer to him for the utilitie of this towne,' he will be fined 100*s.* (Ibid., 400–401.) Cf. also ibid., 408, where cargoes 'bought by the comens' of Galway are referred to.

C. 5 of the Statute of Kilkenny, 40 Edw. III, was enacted mainly for the regulation of the sale of victuals brought to any port or town of Ireland. It ordered that the mayor, sovereign, or other chief officer of the town should call before him two of the most discreet men of the place, as well as the merchant to whom the said wares belonged, and the sailors of his ship. The merchant and the sailors were to state, on oath, the first cost of the goods and the expenses of transportation. Then the mayor, or chief-officer of the town, and the two discreet men were to name a price at which the wares must be sold. See Irish Archaeol. Soc., Tracts relating to Irel., ii. 18.

[3] For this practice at Kenfig and Neath, see vol. ii. pp. 133, 176.

[4] The following municipal ordinance

aimed to secure the equitable distribution of merchandise, particularly victuals; to prevent 'engrossing'; and to keep down prices.

We have a very full account of how these joint purchases were made in Dublin. The Holy Trinity Gild here had the monopoly of such purchases. The principal articles bargained for were wine, coal, iron, salt, pitch, and rosin[1]. The two masters of the Gild were always two of four 'buyers,' and the two wardens were the 'dividers' and 'deliverers,' 'trewly to delywir and dewydid untoo all the brethyrn[2].' When the buyers made a common bargain, the masters and wardens summoned the brotherhood and ascertained what portion each gildsman desired to have. If, after the wants of all had been satisfied, a surplus remained, it was distributed among the brethren merchants, 'every man after his degree[3].' If the bargain was not sufficient to satisfy the wants of all, it was distributed among them in the same way, each merchant receiving a share proportionate to his commercial rank[4]. As soon as the bargain had been thus divided and 'delivered,' an assembly of the gildsmen set a 'reasonable price' upon the wares, which were not to be sold at any other price, under a

of Thurso was made in the seventeenth century:—'That when merchants, shippers, or owners of goods shall come with goods to the said burgh, by sea or land, to be sold in greate, that no inhabitant shall make any bargain therewith, until the baillies and councelors refuse the same; and that the said magistrates, upon the neat payment thereof, without fraud or guile, make offer to the merchants, craftsmen, and inhabitants of the said burgh, that they may have their proportion of the same, according to their necessitys and ability; and that none make merchandise in buying and selling privately or openly, in prejudice of the said merchants, craftsmen, and other inhabitants, under the pains of such laws as the said magistrates shall impose and inflict upon the contraveners, both sellers and buyers, competent, according to the laws of the burgh.' (Calder, Caithness, 279.) 'Any one not a burgess of the burgh [of Linlithgow], importing goods, could not sell them without first making an offer of them to the Council [of the burgh]; and if the importer did not agree with the Council as to the price, he was forbidden to sell them at a lower rate than that he had refused from the Council.' (Hist. of Linlithgow, 1845, p. 14.)

[1] Vol. ii. pp. 66, 68, 70, 72, 73, 76, 78.

[2] Vol. ii. pp. 67, 70, 71, 77, 78.

[3] Probably according to the extent of each man's business, or his commercial standing in the community.

[4] Vol. ii. pp. 67, 73.

heavy penalty[1]. No one was permitted to make an offer for any cargo brought to Dublin, unless the gild-officers (i. e. the 'buyers') refused to purchase it; even then no merchant could buy any part of it without the licence of the 'buyers.' If such licence was granted, then all the brethren who had previously expressed a desire for some of the wares, were to have their due share[2]. The wardens 'shall have for their paynes double holdinges [i. e. shares] of all the bargaines to be made for this yelde[3].' Brethren receiving goods bought by the Gild were to pay for them within ten days[4]. They were sworn to keep secret all matters discussed at the meetings of the fraternity, and especially the views of the assembly concerning 'bargaynes that bene boght and solde[5].' When the stranger merchant had disposed of his cargo, he was to depart within a period specified by the gild officers[6]. In 1603 it was ordered that the masters and wardens should make no bargains for their own account, but only for the benefit of the whole brotherhood; nor should they refuse any bargain without the consent of a competent number of the brotherhood[7].

In some towns other fraternities besides the Company of Merchants made purchases in common, and afterwards divided them among the brethren. Thus wood and bark were bought for the whole Company of Tanners of Alnwick by officers called quartermasters, who allotted to each tanner a proportional share of every purchase[8]. So, too, in the first

[1] Vol. ii. pp. 66, 67, 76.
[2] Vol. ii. pp. 70, 73, 75, 77.
[3] Vol. ii. p. 76.
[4] Ibid.
[5] Vol. ii. p. 68.
[6] Vol. ii. p. 71.
[7] Vol. ii. p. 77.
[8] 'March. 16, 1645. It is ordered, if any bargaines of woode and barke be this yeare bought, that John Strother, Thomas Younger, John Walker, and Robert Strother shall be buyere [? buyers] thereof; and for every dayes jorney they are allowed 2*s.* a man daly; and shall proportion to every man such shares as they shall thinke fitt; and noe man shall buy barke but they shall acquaint the 4 men upon paine of 40*s.* and expulsion out of the bargaine.' April 9, 1646. 'Bought of Mr. James Ogle of Cawsey Parke a bargaine of woode and barke for which the company is to pay two hundred and fortie pound, Anthony Adston, John Strother, Thomas Younger, and Robert Strother [i. e. they bought the bargain], and engaged for payment of them at these dayes following, viz., at Whitsunday next £100, at St. Nicholas day £40, at Michaelmas £100; and as quarter-

half of the eighteenth century the brethren of the Cordwainers' Company of Newcastle-upon-Tyne made purchases of leather in common, which were recorded in 'The Company's Sharers' Book[1].'

There was a Company of Merchants in various other towns besides Alnwick, Carlisle, and Dublin[2]. In the meagre accounts of them that have come down to us, nothing is said of 'common bargains.' Still it is quite probable that such purchases were made by other companies of merchants besides that of Dublin.

maisters doe allot every quarter or proportionable share as followeth; it is agreed that none of the wood shall be sould but with the consent of the four quartermaisters; the partners are to pay upon the 7th of Aprill their first payment to the quartermaistres.' The shares allotted to each tannery were from £5 to £30. (Tate, Alnwick, ii. 338.) 'The last notice of bark buying is in 1721, when 21*s.* was taken out of the common box of the Company to defray the charge of going to York to look for bark. When a common bargain was bought, each tanner was compelled to take his share. One load of bark a member might buy, in 1657, on his own account; but if he bought more, he was fined 39*s.* 11*d.*, and was excluded from all bargains.' (Ibid., ii. 339.)

[1] Mackenzie, Newc., ii. 675.

[2] There was a Company of Merchants at Beverley, Chesterfield, and Morpeth (see vol. ii. pp. 23, 47; Poulson, Bev., 254–256; Rep. Rec. Com., 1837, p. 431; Munic. Corp. Com., 1835, p. 1628; Rep. MSS. Com., 1872, p. 44. In Hull also there were two societies of Merchants (vol. ii. pp. 110, 114). In Ireland the notices of the gild are generally so meagre that it is often difficult to tell whether the ancient Gild Merchant or the later Company of Merchants is alluded to. See the references in the table given above, pp. 18–20; Royal Hist. and Arch. Assoc. of Irel., 1870–1, i. 284, 287, 288; Munic. Corp. Com., Irel., 464, 818; Rep. MSS. Com., 1885, App. v. 444, 445.

We sometimes find the merchants united with other traders, especially with mercers, grocers, and apothecaries. In York the Company of Merchants embraced the merchants, mercers, grocers, and apothecaries (Drake, Ebor., 224). In Salisbury the merchants, mercers, grocers, apothecaries, goldsmiths, drapers, upholsterers, and embroiderers, formed a single company in 1612, which had power to inflict fines upon the brethren for unlawful weights and measures (Hoare, Mod. Wilts, vi. 340). There were formerly twelve companies in Kendal: the chapmen, merchants, and salters; the mercers and drapers; and ten others (Rep. MSS. Com., 1885, App. iv. 312). In 1630 the Company of Merchants of Dorchester included the merchants, mercers, grocers, haberdashers, linen-drapers, apothecaries, booksellers, upholsterers, button-makers, and barber-surgeons (vol. ii. p. 57). The Company of Merchants at Morpeth consisted of merchants and tailors (Mackenzie, Northumb., ii. 192). See also vol. ii. pp. 130, 359.

§ 2.

Merchant Staplers.

The staplers were merchants who had the monopoly of exporting the principal raw commodities of the realm [1], especially wool, woolfels, leather, tin, and lead; wool figuring most prominently among these 'staple' wares [2]. The merchants of the staple used to claim that their privileges dated from the time of Henry III [3], but existing records do not refer to the staple before the time of Edward I. Previous to this reign the export trade was mainly in the hands of the German Hanse merchants.

The staples were the towns to which the above-mentioned wares had to be brought for sale or exportation. Sometimes there was only one such mart, and this was situated abroad, generally at Bruges or Calais, occasionally at Antwerp, St. Omer, or Middleburgh [4]. From the reign of Richard II

[1] For some accounts of the staple, see von Ochenkowski, 187–220; Stubbs, Const. Hist., ii. 446–448; Duke, Prolusiones Hist., 53–81; Jones, Merchants of Staple, in Wilts. Magaz., ix. 137–159 (based mainly on Duke); Schanz, Handelspolitik, i. 327–351; Ashley, Econ. Hist., 111–113; Armstrong, Treatise concerning the Staple, in Pauli's Drei Volksw. Denk., 15–43; Cunningham, Engl. Industry, 176–179, 184–186; Le Débat des Hérauts, pp. xxvi.–xxvii., 114, 115, 144–146; Coke, Fourth Inst., c. 46; Hall, Customs-Revenue, i. 29–45. The fullest accounts are those of von Ochenkowski and Schanz, the former for the earlier history, the latter for the later history; but neither of these writers exhausts the subject. None of the above-mentioned authors have consulted the Staple Rolls in the Record Office (Tower Records). Only four of these seem now to be extant; they belong to the years 27–50 Edw. III, 1–23 Rich. II, 1–10 Hen. VI (Tower Misc., Roll 341), and 1–39 Hen. VI respectively. The first is particularly valuable and should not be ignored by the future historian of the staple.

[2] Butter, cheese, and cloth are also occasionally mentioned: 'Marchandises de l'Estaple, come Leynes, Quirs, Peaux lanutz, et Plumb, ou Esteym, Bure, Furmage, Draps, ou autres Commoditees de la Terre' (Rot. Parl., iii. 278, 14 Rich. II).

[3] Schanz, i. 329; Malynes, Centre of Circle of Commerce, 93.

[4] Rymer, Foedera, ii. 248, 1172, *et pass.*; Statutes of the Realm, 12 Rich. II, c. 16.—The following is one of the earliest documents relating to the staple, 'Pro Maiore Mercatorum et ipsis Mercatoribus. Rex Collectoribus custume lanarum et pellium lanutarum in portubus de Nouo Castro super Tynam, Hertelpole, Kyngestonia super Hull, Lenne, Gernemuta, Gippeswico, London', Sandewico, Cicestria, Suthamtonia,

until 1558 the foreign staple was at Calais[1]. The list of home staples was also frequently changed[2]. During a portion of the reigns of Edward II and Edward III they were at Newcastle-upon-Tyne, York, Lincoln, Norwich, London, Winchester, Exeter, Bristol, Dublin, Drogheda, Cork, Shrewsbury, Carmarthen, and Cardiff[3]. By a statute of 1328 it was enacted that 'the staples beyond the sea and on this side ordained by kings in times past,' should cease, and that merchants, foreigners or natives, might freely go and come with their wares in England[4]. In 1353 staples were established at Newcastle, York, Lincoln, Norwich, Westminster, Canterbury[5], Chichester, Winchester, Exeter, Bristol, Carmarthen, Dublin, Waterford, Cork, and Drogheda[6]. In 1369 it was enacted that the staple at Calais should be abolished, and that staples should be held at Newcastle, Hull, Boston, Yarmouth, Queenborough, Westminster, Chichester,

Bristollia, et Cestria, Salutem. Cum de consilio nostro ordinauerimus quod Mercatores indigene et alienigene lanas et pelles lanutas infra regnum et potestatem nostram ementes et ad terras Brabancie, Flandrie, et de Artoys vendendas ducere volentes, lanas illas et pelles ad dictam stapulam infra aliquam earundem terrarum per Maiorem et Communitatem dictorum Mercatorum de regno nostro ordinandam ac assignandam, ac prout expedire viderint mittandas, et non ad alia loca in terris illis ducant seu duci faciant vllo modo'; and inasmuch as we allowed fines to be imposed by the mayor and counsel of the said merchants for breaches of this ordinance, to be levied by our ministers, 'ad opus nostrum, prout in carta nostra inde confecta plenius continetur': nevertheless, we hear that certain merchants are guilty of breaking this enactment. Hence we request you to help the said mayor in the execution of this ordinance as much as you can (Rec. Office, Pat. Roll 7 Edw. II, p. 1, m. 18, Aug. 22). This 'mayor of the merchants of the realm' or 'mayor of the staple' had the general oversight of all the staples. Cf. Rymer, Foedera, ii. 378, 566; Parl. Writs, ii. pt. ii. App. 291; Rep. MSS. Com., 1881, p. 127.

[1] Von Ochenkowski, 190.

[2] But the Staple Rolls in the Record Office show that the home staples were not changed as frequently as one might infer from the Statutes of the Realm; and that they did not necessarily alternate with the foreign staple, as some writers seem to think, but that both generally existed at the same time.

[3] Rymer, Foedera, ii. 705. In the same document mention is made of Lostwithiel, Truro, and Asperton, as home staples for the tin of Cornwall and Devonshire.

[4] Statutes, i. 259.

[5] The staple at Canterbury was established 'en l'onur de Seint Thomas' (Rot. Parl., ii. 253).

[6] Statutes of the Realm, i. 332. In the same year a petition from the commons to establish staples at Worcester, Nottingham, Hull, Boston, Stamford, Lynn, and Ipswich, was refused (Rot. Parl., ii. 253

Winchester, Exeter, Bristol, and in the Irish and Welsh towns in which they formerly were[1]. Lynn, Melcombe Regis, Ipswich, Galway, and Limerick are also mentioned during the reign of Edward III[2]. Under his successor, Richard II, Boston, Westminster, Winchester, Exeter, and Bristol figure most prominently among the home staples[3]. During the same reign the staple was changed from Queenborough to Sandwich[4]. The Staple Rolls of Henry the Sixth's reign mention only Boston, Chester[5], Newcastle, Westminster, Chichester, Exeter, and Bristol as home staples. The statute of 4 Edward IV, c. 2, enacted that all merchandise of the staple should be carried to Calais and to no other place abroad; and that the said wares should be shipped only from such towns in England where the king had his beam, his weights, and his collectors of customs, namely, at Poole[6], Southampton[7],

[1] Statutes of the Realm, i. 390. For the staple at Boston, see also Rot. Parl., ii. 332, and Thompson, Hist. of Boston, 338–340: for the staples at Yarmouth and Bristol, see also Rot. Parl., ii. 319; Munic. Corp. Com. 1835, p. 1175.

[2] Rec. Office, Staple Roll 27–50 Edw. III, m. 6, *et pass.*; Rot. Parl., ii. 288, 318, 319. For the staples at Ipswich and Lynn, under Rich. II. and Hen. IV, see ibid., iii. 560; and Staple Roll 1–23 Rich. II. In 49 Edward III a staple was established at Galway for three years (Chartae Hibern., 69); for the staples of Cork, Drogheda, Limerick, and Waterford in the same reign, see ibid., 69, 70.

[3] Rec. Office, Staple Roll 1–23 Rich. II.

[4] Ibid., and Rot. Parl., iii. 10, 1 Rich. II.

[5] Chester occurs in Rec. Office, Tower Misc., Roll 341 (3 Hen. VI).

[6] In 1433, Henry VI allowed Poole to be a port for shipping and unloading all sorts of merchandise and all kinds of wares belonging to the staple; and he granted that the mayor of the staple should have cognizance of the staple, with the same liberties as the mayor of Southampton. (Rec. Office, Pat. Roll 1 Edw. IV, p. 3, m. 23; Sydenham, Poole, 161.) 'The statute staple—of which there are some precedents, [temp. Edward VI] still existing in an old book in the municipal archives of Poole—was a bond of record acknowledged before the mayor of the staple, in the presence of all or one of the constables; and to all obligations made on recognizances so acknowledged the statute required that a seal, ordained for that purpose, should be affixed; and this seal of the staple was the only one necessary to attest the contract. These courts have gone into disuse; but the seal belonging to the staple court of Poole is still in existence. It bears the legend—SIGILL: STAPULE IN PORTU DE POLE.' (Sydenham, 162.)

[7] A patent of 23 Hen. VI granted that the town of Southampton should be 'una stapula tam ad recogniciones debitorum in eadem stapula juxta formam Statuti Stapule in eadem stapula accipiendas, quam ad omnia alia ad hujusmodi stapulam pertinencia ibidem facienda et excercenda'; the burgesses were to elect annually a mayor and two constables of the staple. (Rec. Office,

Chichester, Sandwich, London, Ipswich, Boston, Hull, [Newcastle], and Lynn[1]. To the Irish staple towns already mentioned are to be added Carrickfergus, Dungarvan, Ennis, Kilkenny, Kinsale, Londonderry, New Ross, Sligo, Wexford, Youghal, and probably others; but most of these staples appear to have been established by James I[2].

The many changes in the location of the staples—especially the foreign staple, during the fourteenth century—were often due to political rather than economic considerations, the removal of the staple mart being employed by the English king as a weapon of coercion or reprisal against foreign princes.

The most important public enactment regulating the staple is the ordinance of 27 Edward III[3]. It ordains that the staple of wool, woolfels, leather, and lead shall be held in certain places (already mentioned above) in England, Ireland, and Wales. In these towns the wares shall be weighed and sealed under the seal of the mayor of the staple. The custom of the staple having been paid, the goods shall be transported from York to Hull, from Lincoln to Boston, from Norwich to Yarmouth, from Westminster to London, from Canterbury to Sandwich, and from Winchester to Southampton. At these ports the wares shall be again weighed by the royal collectors of customs ('customers'). Merchandise brought to the other staple towns (Newcastle, Chichester, etc.) shall be weighed only once, in the presence of the 'customers,' an indenture being made between the latter and the mayor of the staple of all wares brought to the staple for exportation[4]. Foreign merchants shall be protected,

Conf. Roll 2 Rich. III, p. 3, m. 32; Rep. MSS. Com., 1887, App. iii. p. 45.) Speed, the historian of Southampton, who died in 1781, says: 'The Corporation still continue to elect officers of the staple every year, who are sworn into their offices; the mayor taking the oath of the Mayor of the Staple, besides the oath of a mayor as a civil magistrate' (Davies, Southamp., 219).

[1] Statutes of the Realm, ii. 407–409.

[2] See vol. ii. pp. 250, 251, 285–288; Munic. Corp. Com., Irel., 64, 76, 314, 535, 559, 622, 746; Liber Munerum, i. 2, 7, 8, 27, 35, 40.

[3] Statutes, i. 332–343.

[4] Ibid., c. 1.

and justice is to be done them from day to day and hour to hour, according to the law of the staple or the law-merchant, and not according either to the common law or particular burghal usages[1]. They shall be impleaded before no tribunal except that of the mayor and constables of the staple[2]. This mayor is to have recognizances of debts, a seal being provided for that purpose[3]. In every staple town a mayor and two constables are to be appointed by the king to govern the staple; in the future the former shall be annually elected by the commonalty of the merchants, as well aliens as denizens[4]. The mayor and constables shall have power to keep the peace, and to arrest offenders for trespass, debt, or breach of contract. The mayors, sheriffs, and bailiffs of the towns where the staples are held, shall aid the mayors and constables of the staples in the execution of their duties[5]. The merchant strangers shall choose two aliens to sit with the mayor and constables of the staple to try suits touching alien merchants[6]. The ordinance contains several other important enactments, which we cannot here stop to discuss.

It is evident that the staple was primarily a fiscal organ of the crown, facilitating the collection of the royal customs. It also ensured the quality of the goods exported by providing a machinery for viewing and marking them; and it stimulated commerce by providing alien merchants with a special tribunal and protecting them in other ways, 'to give courage to merchant strangers to come with their wares and merchandises into the realm[7].'

It is likewise evident, from the ordinance of 27 Edward III

[1] Statutes, i. 332–343, c. 2.

[2] Ibid., c. 8.

[3] Ibid., c. 9.

[4] The Staple Rolls in the Record Office consist chiefly of royal confirmations of such elections. These Rolls show that the two constables as well as the mayor were generally elected by the merchants both native and foreign.

[5] Statutes, i. 332–343, c. 21.

[6] Ibid., c. 24.

[7] Ibid., i. 333. C. 2 also states one object of these laws to be 'to replenish the said Realm and Lands with Money and Plate, Gold and Silver,' etc. For the functions of the staple as an organ to regulate the importation of precious metals, see von Ochenkowski, 201, *et seq.*

and from other records, that the mayor and constables of the home staples were public functionaries of the king, originally distinct from the municipal authorities [1], although in course of time it became customary in some towns for the mayor of the borough to act *ex-officio* as mayor of the staple [2].

We are particularly concerned with the organization of the staplers as a company or gild. There can be no doubt that they constituted one general fraternity or fellowship, although few modern writers allude to this fact, and some expressly deny it [3]. Indeed, the Company of the Staple of England is still in existence, although it is now shorn of all its ancient trade functions, its members assembling only to feast together. In a plea before Justices Day and Wills [4], March 20, 1887, it was claimed that Edward III founded the Company, but no confirmation of this appears in the Statute, Parliament, or Staple Rolls of his reign. It is more probable that the Company was established by one of his immediate successors. It was already in existence about the middle of the fifteenth century. 'Concerning your marchauntes of Fraunce,' says a writer of that period, 'we have also marchauntes in England, who frequenteth all the partes of the world for traffique of marchaundyse. And especially .II. companyes, that is to say, the ryght worshypful company of marchauntes adventurers, and the famous felyship of the Estaple of Calais, by whom not only the martes of Barowe [5] and Andwarpe be mayntened, but

[1] Vol. ii. pp. 58, 59, 251; Rep. MSS. Com., 1887, App. iii. 45.

[2] Davies, Southamp., 219; Hunt, Bristol, 77; Rep. MSS. Com., 1885, App. v. 282.

[3] Duke, Prolusiones, 71–77.

[4] This case was tried in the Queen's Bench; a report of the proceedings is given in the *Daily Chronicle* of March 28, 1887. It was an action brought by the Company against the Bank of England for the recovery of £4250 in consols, which the clerk of the Company had drawn from the Bank and appropriated to his own use. The head of the society is still called the mayor. Now that its funds have been embezzled, this spectre of a once powerful organization will probably soon vanish.—I have tried to ascertain whether the Company possesses any of its ancient records, and whether I would be allowed to consult the same, if any existed. The solicitors of the Company, Messrs. Watney, Tilleard, and Freeman, of 4 Lombard Court, E.C., made no answer to my inquiries.

[5] (?) Bruges.

also in effect al the townes of Brabant, Holand, Zeland, and Flaunders [1].'

The home staples of England and Wales individually do not seem to have constituted separate fraternities [2], though they often acted jointly, as, for example, in electing their mayors and constables. In Ireland, on the other hand, during the fifteenth and sixteenth centuries, the staplers of a town were generally incorporated as a company or fraternity [3]. The charter granted by the king to such a fellowship generally allowed its members annually to elect a mayor and two constables, to make bye-laws, to have charge of the king's beam for the weighing of wares, and to take recognizances of the staple. It was the custom in some Irish boroughs to appoint the retiring mayor of the town mayor of the staple, and the retiring bailiffs of the town constables of the staple [4].

[1] Coke, in Le Débat des Hérauts, 114, 115. In the early part of the sixteenth century Armstrong refers to the merchants of the staple as a 'company corporat' (Pauli, Drei Volksw. Denk., 15). See also Rep. MSS. Com., 1872, p. 25.

[2] Perhaps Boston forms an exception; for the staplers there had a hall and owned property (Thompson, Boston, 212, 222). Probably, however, such halls were used more for the weighing and viewing of the staple wares than for convivial purposes.

[3] See the references given above, p. 143, n. 2; vol. ii. pp. 59, 85, 250; Liber Munerum, i. 7, 24, 25; Munic. Corp. Com., Irel., 318, 319, 346, 348, 349, 583, 810, 818; Hardiman, Galway, 99, 100; D'Alton, Drogheda, i. 165, 166; Rec. Office, Pat. Roll 7 Car. I, p. 7, No. 8; Rep. MSS. Com., 1885, App. v. 282, 284, 287, 306; Addit. MSS., Mus. Brit., 19865, ff. 153-156; 31885, ff. 219, 220 (charters of 6-7 Jac. I to Cork and Limerick).

[4] Vol. ii. p. 251; Munic. Corp. Com., Ireland., 818. In Waterford the mayor of the town appears to have been *ex officio* mayor of the staple; the sheriffs, the constables of the staple; and the gaoler, marshal of the staple (Rep. MSS. Com., 1885, App. v. 282, 284). The following also relates to Waterford. 'Feoda Curie Stapule dicte Civitatis et Amerciamenta ejusdem:—In primis, de qualibet querela cujuscumque accionis, videlicet, ad usum et disposicionem Maioris et Constabulariorum, et non ad communem pixidem, xx.*d.* Item, Recordatori, sive clerico, pro introitu cujuslibet querele, viii.*d.*' Various other fees follow, including the fee of the marshal. 'Amerciamenta ejusdem Curie sicut in Curia Civitatis supra-scripta.' (Ibid., 287.) This record seems to be of the sixteenth century. In 1469-70, it was ordained by the commonalty of Waterford 'that the Maire nor constables of the Staple sholde receve no manere of man into the fredome of the same withoute thadvice of the marchauntes of the Staple whiche wil be presente att that tyme of congregation, and in especial of x. or xii. of the counsaile. And that no man be recevid marchaunt of the Staple, lasse than afor he be a freman sworne of the saide citie and of Inglish nacion, or else to have his liberte of

In idea and generally in practice, the Company of Merchants, spoken of in the preceding section of this chapter, was distinct from the Company of the Staple. The latter had to do with the sale and exportation of a certain few commodities; the former was concerned with internal trade and dealt in a great variety of articles. At Dublin, however, the staplers seem to have constituted a higher branch of the Society of Merchants, probably consisting of its wealthier members [1]. No one in Dublin could be a stapler until he had exercised the occupation of a merchant at least two years [2]. The distinction between the town, the Company of Merchants, and the Company of Staplers is well illustrated in the history of Drogheda. In this borough the mayor of one year was mayor of the staple during the year following and master of the Gild of Merchants during the third year. There was a similar succession in the offices of sheriffs of the town, constables of the staple, and wardens of the Gild of Merchants [3].

The increase of home manufactures and the corresponding diminution in the export of wool sapped the foundations of the staple system. The prohibition of the export of wool in 1660 [4] must have given a finishing blow to the staple as an active organism. But there were still some survivals of the home staples in the first half of the present century [5], and as I have already pointed out, the Company of the Staple of England is still in existence.

the Kyng.—And no manere of man by no freshe hyds within the jurisdiction of the saide staple, save only marchaunts of the same whiche shal be admyttid by the Maire and constables of the saide Staple lawfully to by and syll.' No one was to buy fresh hides 'above x.*d.* an hyd' in any place where the Staple has jurisdiction, nor salt hides 'above x.*s.* a dicker.' (Ibid., 306.)

[1] Vol. ii. p. 85.

[2] Vol. ii. p. 76.

[3] Munic. Corp. Com., Irel., 818.

[4] Statutes of the Realm, v. 293; this Act was not repealed until 28 Geo. III, c. 38, § 1. See also Statutes, v. 410, 14 Car. II, c. 18.

[5] Davies, Southampton, 219; Munic. Corp. Com., Irel. 348.

§ 3.

Merchant Adventurers.

The original Company of the Merchant Adventurers carried on trade chiefly with the Netherlands[1]. Their principal mart was at first Bruges, whence it was removed to Antwerp early in the fifteenth century[2]. In distinction from the staplers, who dealt in certain raw materials, the Merchant Adventurers had the monopoly of exporting certain manufactured articles, especially cloths[3]. Though of national importance[4], they constituted a strictly private company, and not, like the staplers, an administrative organ of the British government. The former were all subjects of the English crown; the staplers were made up of aliens as well as Englishmen[5]. In the sixteenth and seventeenth centuries frequent dissensions broke out between these two bodies regarding the exportation of cloth[6]. To

[1] The best account of this Company will be found in Schanz, Handelspolitik, i. 327–351, ii. 539–589. See also Wheeler, Treatise of Commerce, pp. 1–126; Ashley, Woollen Industry, 67–71; Cunningham, Engl. Industry, 241, 242; Smith, Memoirs of Wool, i. 204–207; Hall, Customs-Revenue, i. 45–50. In the British Museum, Addit. MS. 18913, there is an interesting volume entitled, 'The Lawes, Customes, and Ordinances of the Fellowshippe of Merchantes Adventurers of the Realm of England, collected and digested into order by John Wheeler, Secretarie to the said Fellowshipe, Anno Domini 1608.' It contains a few continuations by other hands down to the year 1688. In the Record Office, State Papers, Domestic Series, 1660–1661, vol. 27, there is a volume containing the charters granted to the Merchant Adventurers from Henry IV to Charles II.

[2] Schanz, i. 338, 339; Wheeler, 14, 15. Middleburgh and Emden are frequently mentioned as mart towns in the sixteenth century. (Addit. MS. 18913, ff. 76, 92, *et pass.*)

[3] Addit. MS., Mus. Brit., 18913, ff. 43–96; Rymer, Foedera, xx. 547; Statutes of the Realm, 12 Hen. VII, c. 6; Malynes, Maintenance of Free Trade, 50.

[4] In 1648 money lent by the Merchant Adventurers for the use of the navy is referred to (Rep. MSS. Com., 1879, p. 59). Cf. ibid., 1874, p. 224; 1876, p. 21. See also Macpherson, Commerce, ii. 184, 185.

[5] The Staple Rolls in the Record Office contain many confirmations of elections of mayor and constables of the local staples, who are almost invariably said to have been elected 'per mercatores tam indigenas quam alienigenas.' No freeman of the Company of Merchant Adventurers was even allowed to marry a woman born out of the realm of England. (Addit. MS. 18913, fol. 167.)

[6] Schanz, i. 344–347, ii. 547–564, 588; Rep. MSS. Com., 1872, p. 25;

carry on foreign trade freely in wool as well as in cloth, a merchant had to join both companies[1].

Much obscurity hangs over the early history of the Merchant Adventurers. They claimed that John, Duke of Brabant, founded their society in 1216 or 1248, and that it originally bore the name of the Brotherhood of St. Thomas à Becket[2]. But it could scarcely have existed in its later form before the reign of Edward III, when the cloth industry began to flourish in England. The earliest charter granted to it as an organized association dates from the year 1407[3]. Their powers were greatly increased by Henry VII[4]. The soul of this society, and perhaps its original nucleus, was the Mercers' Company of London, which from a fellowship of general dealers in petty wares had developed into a body of wholesale traders, dealing mainly in silks. Down to 1526 the minutes of both Companies were kept in the same book; and the Mercers' Hall was the headquarters of the Merchant Adventurers until the fire of 1666[5]. But among the latter there were many other merchants besides mercers[6].

In 1601 John Wheeler[7] thus describes the society, of which he was secretary:—'The Company of the Merchants Adventurers consisteth of a great number of wealthie and well experimented Merchants, dwelling in diverse great Cities,

1881, p. 127; Malynes, Center of the Circle of Commerce, 85–96.

[1] Schanz, i. 346.

[2] Ibid., i. 336; Wheeler, 10; Statutes of the Realm, 12 Hen. VII, c. 6. They do not seem to have been called Merchant Adventurers anterior to the reign of Henry VI. The earliest use of the term that I have met with dates from the middle of the fifteenth century (see above, p. 145). Down to the reign of Henry VII they are generally called 'mercatores in partibus Hollandie, Selandie, Brabancie et Flandrie.'

[3] Rymer, Foedera, viii. 464. The later confirmation charters do not refer to any earlier grant. See Schanz, ii. 544, 575; Calendar of State Papers, Domestic Series, 1660–1661, p. 464; Notes and Queries, Second Series, x. 515; Malynes, Center of Circle of Commerce, 88.

[4] Schanz, i. 340, 341.

[5] Liv. Comp. Com., 1884, App. ii. 1, 2. See also London and Middlesex Archaeol. Soc., Trans., iv. 134; Schanz, i. 336, ii. 575; Herbert, Liv. Comp., i. 232; Statutes of the Realm, 12 Hen. VII, c. 6 ('the felishippe of the Mercers and othre marchauntes and adventurers').

[6] Addit. MS. 18913, ff. 110, 111; cf. Pauli, Drei Volksw. Denksch., 39.

[7] Treatise of Commerce, 19, 24.

Maritime Townes, and other parts of the Realme, to wit, London, Yorke, Norwich, Exceter, Ipswitch, Newcastle, Hull, &c. These men of olde time linked and bound themselues together in Companie for the exercise of merchandise and sea-fare, trading in Cloth, Kersie, and all other, as well English as forreigne Commodities vendible abroad, by the which they brought vnto the places where they traded, much wealth, benefite, and commoditie, and for that cause have obtained many verie excellent and singular priuiledges, rights, iurisdictions, exemptions and immunities, all which those of the aforesaid Fellowship equally enioy after a well ordered maner and forme, and according to the ordinances, lawes, and customes deuised and agreed vpon by common consent of all the Merchants, free of the said Fellowship, dwelling in the aboue-named Townes and places of the land: the parts and places which they trade vnto, are the Townes and ports lying betweene the rivers of Somme in France, and the Scawe [in Denmark] in the Germane sea[1]: not into all at once, or at each man's pleasure, but into one or two Towns at the most within the abouesaid bounds, which they commonly call the Mart Towne, or Townes; for that there onely they stapled the commodities, which they brought out of England, & put the same to sale, and bought such forreigne commodities as the land wanted, and were brought from far by Merchants of diuerse Nations and countries flocking thither as to a Faire, or market, to buy & sell[2] . . . . Besides, the said Companie

[1] In 1608 Germany is also mentioned: 'If anie Englishe borne subiect beinge vnfree or no member of this ffellowshippe of Merchantes Adventurers shall of his own wronge intermedle with or exercise trade of merchandise in the Low Countries, East friesland [and] Germanie' contrary to the privileges of the Merchant Adventurers, the wares of the offenders may be seized, until they pay the penalties imposed upon them (Addit. MS. 18913, fol. 42; cf. fol. 95). In another place it is stated that any person, whether free of the fellowship or not, can ship cloths and other commodities to any foreign country except to the places 'lyinge between the Rivers of Somme in ffraunce and the Schaye in Dutchland' (ibid., 45). See also Rymer, Foedera, xix. 583, xx. 342.

[2] 'In whiche places [in the Netherlands] the universall martes be comenly kepte and holden iiii. tymes in the yere, to whiche martis all Englisshe men and dyvers other nacions in tyme passed have used to resorte, there to sell and

hath a Gouernour, or in his absence, a Deputie, and foure and twentie Assistantes in the Marte Towne, who have iurisdiction and full authoritie as well from her Maiestie as from the Princes, States and Rulers of the Low Countries, and beyond the seas, without Appeale, prouocation, or declination, to ende and determine all Ciuill causes, questions, and controuersies arising betweene or among the brethren, members, and suppostes of the said Companie, or betweene them and others, either English or Straungers, who either may or will prorogate the iurisdiction of the said Companie and their court, or are subiect to the same by the priuiledges and Charters thereunto granted.' In 1622 Malynes complained that the trade of the Merchant Adventurers was controlled by a few persons residing for the most part at London. 'All the Trade of the Merchants of the Staple, of the merchant Strangers, and of all other English Merchants, concerning th'exportation of all the Commodities of Wooll into those Countries where the same are especially to bee vented, is in the Power of the Merchants Aduenturours only; and it is come to be managed by 40 or 50 persons of that Company, consisting of three or foure thousand[1].'

Though the most influential Merchant Adventurers resided in London, there were many in other English towns. To the list of places where they dwelt given above in the extract from Wheeler's Treatise, we may add Boston, Bristol, Devizes, Salisbury, and Yarmouth[2]. During the sixteenth century, especially under Elizabeth, the Merchant Adventurers of a borough were sometimes incorporated as a separate fraternity. Thus the Company of Merchant Adventurers of

uttre the commoditees of their Contreies and frely to bye ageyn suche thinges as semed theym moost necessarie and expedient for their profite and the weale of the Contrey and parties that they be comme from' (Statutes of the Realm, 12 Hen. VII, c. 6).

[1] Maintenance of Free Trade, 50, 51.

[2] Vol. ii. pp. 26–28, 54, 355; Thompson, Hist. of Boston, 73; Palmer, Yarm., 105; Hoare, Modern Wilts, vi. 342. The statute of 12 Hen. VII, c. 6, speaks of 'Marchauntes Adventurers inhabite and dwelling in divers parties of this Realme of Englond oute of the Citie of London.'

Bristol received a charter from Edward VI, and that of Chester was incorporated by Queen Mary; each was governed by a master and two wardens[1]. The Company of Merchant Adventurers of Hull was, we are informed by a local historian, distinct from the Society of Merchants of Hull. Elizabeth granted the latter the monopoly of the trade of Hull with foreign countries[2]. The Merchant Adventurers of Exeter constituted a very influential body. The master and wardens of this 'art or mystery' had power—with the help of the mayor and four aldermen of the city—to inflict punishment for any defects (in weights, etc.) relating to their trade[3]. Edward VI incorporated the 'merchant venturers' inhabiting the town of Newcastle-upon-Tyne, 'qui modo sunt de societate mercatorum venturariorum in partibus Brabantie in partibus transmarinis.' Its officers were a governor, twelve assistants, two wardens, a clerk, and a beadle. This Company consisted of three separate fraternities—the Mercers, Drapers, and Boothmen or Corn Merchants[4]. The Merchant Adventurers' fellowship of York originated in the Company of Mercers of that city. It had a governor, eighteen assistants, and three or more searchers[5]. In Chester, likewise, the mercers seem to have formed a prominent element in the Company of Merchant Adventurers[6]. Companies of Merchant Adventurers are still in existence at Bristol, York, and Newcastle[7].

The materials illustrating the relations of these local

[1] Vol. ii. pp. 26–28, 355, 360–362.

[2] Vol. ii. pp. 110–114.

[3] Vol. ii. pp. 87–89. The Company spoken of in vol. ii. pp. 371–373 was probably distinct from this.

[4] Vol. ii. pp. 185, 385; Brand, Newc., ii. 647–654; Rep. MSS. Com., 1874, p. 312. It is reported that their records —which reach back to the fifteenth century—will soon be printed by the Surtees Society.

[5] Vol. ii. pp. 280–285. Cf. Hargrove, York, ii. 278–286.

[6] Vol. ii. p. 362. A description of the mercers of Kendal in 1759 indicates that they were Merchant Adventurers:

'The mercers next appear, a goodly train,
For whom our hardy Sailors plough the main;
Fraught with the labour of our artist's hands,
Thro' hottest climes they roam to distant lands,
From whence they bring the richest treasure here.'
Nicholson, Kendal, 141.

[7] Vol. ii. pp. 28, 186, 285.

societies to the general Company of Merchant Adventurers are not very abundant. Wheeler[1] says: 'By the said Gouernour and Assistantes [of the general Company] are also appointed and chosen a Deputie and certaine discreet persons, to be Associates to the said Deputie, in all other places conuenient, as well within as without the realme of England, who all hold Correspondence with the Gouernour of the Company and chiefe Court in the Marte Towne on the other side the seas, and haue subalterne power to exercise Merchants law, to rule, and looke to the good ordering of the Brethren of the Companie euery where, as farre as may be and their Charters will beare them out.' Among the ordinances of the general Company is one regulating the exportation of goods by 'the ffree brethern of this ffellowshippe dwellinge at Excester[2].' In 1519 the society at Newcastle agreed to pay the general Company of Merchant Adventurers—'the merchants of London beyond sea'—£8, 'in lieu of all impositions[3].' In 1528 the governor and two wardens of the Newcastle society recommended a brother, on the payment of the usual duties, to be admitted into the fellowship of the Merchant Adventurers of England; 'to which privilege it appears, by the tenor of their recommendation, that any merchant who had served seven years to one of the fraternity at Newcastle had a just and unquestionable claim[4].' The following enactment was made by

[1] Treatise, 25.

[2] Addit. MS. 18913, fol. 57. No date is given, but the ordinance was probably made in the sixteenth century.

[3] Brand, Newc., ii. 225. 'The Brethern of Newcastle shall yearly in the Pasche Marte pay or cause to bee payd vnto one of the Tr[esure]rs of the Fellowshippe, or other lyke Officer appointed by Court one this syde the seas, the somme of eight poundes sterlinge by waye of Impositions in the name and for the dew of all those of the Fellowshippe residinge and dwellinge in the said Towne, vpon pain of the Doble, omittinge or neglectinge the same' (Addit. MS. 18913, fol. 89).

[4] Brand, Newc., ii. 226; Bourne, Newc., 222; Mackenzie, Newc., ii. 666. 'None of the Brethern of Newcastle shall take anie more apprentyces to bee ffree of this ffellowshippe then ys permitted to other brethern elswhere, vpon the penalties therefore ordayned. Neither shall anie apprentyce to bee bound for lesse tyme then tenn yeares service by Indenture orderly made, except suche apprentyce may otherwise bee ffree of the ffellowshippe by Patrimonie, vpon pain of twentie poundes sterlinge.'—'The Brethern of Newcastle shall cause

the general Company, probably in the sixteenth century:— 'None of the Brethern of this ffellowshippe dwellinge at Newcastle vpon Tyne bringinge into these partes where the said ffellowshippe ys privileged woolle, commonly called black woolle, shall sell or vtter the same vnder eleven marckes the sack, neither white woolle vnder eighteen marckes the sack, vpon pain of tenn poundes sterlinge toties quoties[1].' The arms of the Company of Merchant Adventurers of Hull corresponded to those of the Merchant Adventurers of England[2]. In 1576 the latter agreed to admit ten inhabitants of Boston into their Company; whereupon the town authorities of Boston appointed these ten[3]. It is probable that in some towns, like Boston, the Merchant Adventurers were not numerous enough to form a separate society; but in other places, like Newcastle, there were subsidiary fellowships of Merchant Adventurers, under the general regulation of the parent fraternity, whose headquarters was at London. A similar relation subsisted between the London Teutonic Hanse and its local branches in England[4].

In a petition of the governor, wardens, assistants, and fellowship of Merchant Adventurers of Newcastle-upon-Tyne to parliament in 1644, they state 'that they have beene an antient company of merchants ever since King John's tyme'; and 'that the merchants of Newcastle are an antient guild of merchants ever since the 17th yeare of King John[5].' They

their Apprentyces to bee orderlye enrowled, and suche Enrollement to bee endorsed with the daye, monthe, and year of the date thereof vpon the Indenture, vpon pain of fourtie shillinges. And yf anie apprentyce shalbe enrowled at Newcastle, the Governour there shall keep Register thereof and yearly send over note of those which shalbe there so Enrowled' (Addit. MS. 18913, fol. 89).

[1] Addit. MS. 18913, fol. 88; cf. also fol. 89. Various other ordinances relating to Newcastle are given on ff. 88, 89, of this manuscript; they were made by the general Company, probably in the sixteenth century.

[2] Frost, Hull, 37.

[3] Thompson, Hist. of Boston, 73.

[4] Gierke, Genossenschaftsrecht, i. 352. It is said that there were German Hanse societies or 'steelyards' in Hull, York, Newcastle, Boston, and Lynn, besides the chief one in London. See Pauli in Hans. Geschichtsblätter, 1877, p. 131; and Drei Volksw. Denk., 45; Hargrove, York, ii. 279; Lappenberg, Hans. Stahlhof, 162–171, and [App.] 207–218.

[5] Vol. ii. p. 185. Cf. Merew. and Stephens, 1672, 1673.

doubtless had in mind the charter of 17 John, which granted to the burgesses of Newcastle a Gild Merchant[1]. Like all other medieval societies, the Adventurers of Newcastle would naturally be inclined to surround their origin with the halo of antiquity. It is possible that they were really descended from the ancient Gild Merchant in an unbroken line of continuity; but the unsupported assertion of the Adventurers themselves is not sufficient evidence to justify us in concluding that this was actually the case. It is more probable that they, like the other local fellowships of Merchant Adventurers, constituted merely one of the various mysteries or occupations which succeeded the ancient Gild Merchant. The latter was the predecessor, rather than the progenitor, of these later fraternities.

The contrast between the old Gild Merchant and the Company of Merchant Adventurers is striking. The one had to do wholly with foreign trade, and its members were forbidden to exercise a manual occupation or even to be retail shopkeepers[2]; the other, as has already been pointed out, consisted mainly of small shopkeepers and artisans. The line of demarcation between merchants and manual craftsmen was sharply drawn by the second half of the sixteenth century, the term 'merchant' having already acquired its modern signification as a dealer on an extensive scale[3].

[1] Vol. ii. p. 183. For some remarks on the relation of the Merchant Adventurers of Newcastle to the old Gild Merchant, see Gibson, Improvement Acts, p. xxx.

[2] Vol. ii. pp. 360–362, 371. The following is extracted from the ordinances of the general Company:—'No persone of this ffellowshippe dwellinge within the Cittye of Londone and vsinge or exercysinge by himself or by or with anie other in Companie the ffeat and Trade of a Merchant Adventurer into the Lowe Countries or Germanie or other privileged place one this syde the Seas, shall by anie means sell or cause to bee sold for him by retayle or cuttinge out anie kynde of merchandise, nor shall keepe open shoppe or shewhouse, upon pain of three skore poundes sterlinge,' etc. (Addit. MS. 18913, fol. 81). See also Rymer, Foedera, xix. 584. In 1589 an order was made at Chester forbidding merchants of Chester belonging to a Company of Merchant Adventurers from exercising any 'manuall occupacion,' but allowing them to retail in any one trade (Harley MS. 2104, fol. 304; cf. Rep. MSS. Com., 1881, p. 364).

[3] The term is thus defined by Malynes in 1622: 'He that continually dealeth

Besides the Company of Merchant Adventurers trading to the Low Countries—which during the eighteenth century was called the Hamburgh Company[1]—various new Companies of Merchant Adventurers trading to other lands arose in the sixteenth and seventeenth centuries, especially during the reigns of Elizabeth and her immediate successors[2]. Among them were the Russian or Muscovy Company, the Turkey or Levant Company, the Guinea Company, the Morocco Company, the Eastland Company, the Spanish Company, and the East India Company, the last-mentioned being the most powerful of them all. Some of these bodies also had local branches in the towns of England[3].

in buying and selling of commodities, or by way of permutation of wares both at home and abroad in forreine parts, is a Merchant' (The Ancient Law-Merchant, p. 5). At Chester in 1589 the occupation of a merchant is contrasted with that of a retailer (Rep. MSS. Com., 1881, p. 364).

[1] Adam Smith, Wealth of Nations, 330; Smith, Memoirs of Wool, i. 204. In 1687 one of the principal 'residences' or marts of the Company was at Hamburgh (Addit. MS. 18913, fol. 200). See also Macpherson, Commerce, ii. 171, 447, 500, 502.

[2] Schanz, i. 351; Hall, Customs-Revenue, i. 50–54, 316; Cunningham, Engl. Industry, 321, 322, and Politics and Econ., 80, 81; Bourne, Engl. Merchants, 86, 195, 196, 217; Gardiner, England, i. 187–190; Smith, Wealth of Nations, 330–339; Rep. MSS. Com., 1874, p. 25; Macpherson, Commerce, Index under 'Companies of Merchants'; Tracts on Commerce, ed. McCulloch, 332, 631, 637, 645, 661; Hakluyt, Voyages, i. 267, 295–305, 341, 352, 369, 433; ii. pt. i. 146; ii. pt. ii. 53, 114. For the East India Company, see Stevens, Dawn of British Trade, *pass.* In 1391, Richard II granted a charter regulating the affairs of English Merchants in Prussia (Rymer, Foedera, vii. 693). For a similar grant by Henry IV, see Foedera, viii. 360; cf. viii. 112. The English merchants 'in partibus Norwegiae, Sweciae et Daciae commorantes' also received a charter from Henry IV in 1408 (ibid., 511). In 1478–9 a fraternity of English merchants trading to Ireland was established at Dublin, called the Gild of the Blessed Virgin Mary. By a statute of 1481 this Company was granted the monopoly of trading to those parts of Ireland where the writ of the king of England was obeyed. See Gilbert, Dublin, i. 324, 420–426; Irish Archaeol. Soc., Tracts, ii. 71.

[3] Vol. ii. pp. 362, 373; and above, p. 155, n. 2. For the Company of Merchant Adventurers of Exeter trading to France, see also Statutes of the Realm, 4 Jac. I, c. 9. Worth in his History of Plymouth, p. 213, says that the merchants of Plymouth received royal permission to trade with Portugal in 1360. The following is taken from Mackerell's History of Lynn, p. 216: 'Henry [V] by the Grace of God King of England and of France and Lord of Ireland, To Our Trusty and Well beloved the Mayor, Aldermen, and other Merchants inhabiting within our Town of Lynn; [Inasmuch as ye have] shewed unto us that by the old Privilege among you used, in Exercising the Sale of your Merchandizes in the Lands and

There appear to be three stages in the history of the word 'merchant.' At first it embraced all who, in their trade, were in any way concerned with buying and selling, including petty shopkeepers and many handicraftsmen. During the fifteenth and the greater part of the sixteenth century it applied preeminently to all who made a business of buying for resale—retailers as well as wholesalers—manual craftsmen not being included [1]. It then came to have its present signification of an extensive dealer. In conception, the old Gild Merchant represents the first stage; the Companies of Merchants, the second; the Staplers and Merchant Adventurers, the third.

Countries of Denmark and Norway, Ye have an Antient Custom to have an Alderman, chosen by election among you to be Ruler and Governor of Your Company to the said Countries, and to see good Rule and Order kept among you there'; hence the king allows them to assemble together and choose the said Alderman as they had been accustomed. Cf. Richards, Lynn, i. 485.

[1] Armstrong clearly uses the term in this sense early in the sixteenth century. See Pauli, Drei Volksw. Denks., 40; cf. ibid., 44, 45; see also vol. ii. pp. 23, 176, 263, 359, 380.

CHAPTER IX.

The Later History of the Gild Merchant.

It is no easy task to trace the later history of the Gild Merchant. In the fragmentary remains of the ancient structure still extant in modern times, there is a confusing vagueness of outline, which is inherent in the development itself, and for which neither the meagreness nor the manipulation of the sources can be held accountable. For where the Gild Merchant had not completely disappeared, it either vegetated on in a wholly different form, or merged its existence in other institutions. Like almost every other phase of English municipal history in modern times, the prevalence of a multitude of anomalies and the great diversity of development preclude any successful attempt at broad generalisation.

Before considering the later fortunes of the Gild Merchant, let us attempt to define the stages of development through which it had already passed. As its earliest history is wrapped in obscurity, we must resort to conjecture, basing the latter, however, upon the results deduced in the preceding chapters. Whether we place the inception of the fraternity immediately before or after the Norman Conquest, whether we make it the continuation of older Anglo-Saxon gilds, or a derivative from Normandy, or a wholly new and spontaneous growth, it was doubtless at first merely a private society, unconnected with the town government, having for its object the protection of its members, the tradesmen of the borough, and the maintenance of the newly invigorated trade interests.

During the twelfth century it gradually became a recognised

part of the town constitution, thus entering upon its second stage of development. How this came to pass can be easily realised from the later history of English gilds in general. For in the fourteenth and fifteenth centuries, as has already been pointed out [1], a simple social-religious gild at times attained such power in a community that it came to be regarded as an important constituent element of the civic administration. Quite similar must have been the growth of the Gild Merchant, which from the outset was doubtless composed of the most influential burgesses, and which, as the exponent of the mercantile interests, must always have been greatly concerned in the increase of the privileges and prosperity of the borough in general. It was very natural that the town authorities should use such a society for public purposes, entrusting to it the surveillance of the trade monopoly, in which its members were particularly interested, — allowing it to gradually become an important part of the civic administrative machinery. It has been my chief object to describe the institution in this second and most important stage of its development. The Southampton statutes seem to have been made partly before and partly after the fraternity had become an official civic body; some of them probably also belong to a still later period of the history of the Gild [2].

The beginning of this third and final stage of development cannot be definitely fixed; for in some places it was of an earlier date than in others. The fourteenth century may in general be called the period of gradual transition. In the fifteenth century the transformation was completed. In this and the following centuries the term 'Gilda Mercatoria' became less and less frequent [3]. In many places it soon wholly disappeared. Where it continued to subsist, the Gild no longer

[1] Above, pp. 83, 84.

[2] Vol. ii. pp. 214–231.

[3] For some notices of the Gild Merchant in the sixteenth and seventeenth centuries, see above, pp. 9–20; vol. ii. pp. 1, 2, 12, 19, 20, 21, 36, 45, 48, 53–56, 86, 109, 148, 192, 193, 195, 198, 208, 213, 234, 250, 264–268, 272, 276, 346–348, 356, 359; Allen, Portsm., 97; Powysland Club, iii. 92; Devon. Assoc., xii. 324; Simpson, Derby, 75.

had an individuality of its own. Its alderman and other peculiar officers, its whole organization as a distinctive entity, had vanished. It had merged its identity in that of the general municipal organism. The head of the fraternity was now the head of the town; borough and Gild, burgesses and gildsmen were now identical. What had once been a distinct integral part of the civic body politic became vaguely blended with the whole of it [1]. The old Gild Merchant was now rarely mentioned in connection with the municipal trade restrictions and regulations, the latter being commonly applied to burgesses [2], craftsmen, freemen [3], or 'foreigners [4].'

The exegesis of this transformation has already been given in the preceding pages [5]. It was due mainly to three causes: (1) the expansion of trade and the multiplication of the craft and mercantile fraternities, which absorbed the ancient functions of the Gild Merchant and rendered it superfluous; (2) the growth of the select governing body, which usurped most of the privileges of the old burghers at large, and hence tended to obliterate the distinction between them, or their less privileged successors, and the ancient gildsmen, leaving both only certain trade immunities; (3) the decay of the leet—the rallying point of the old burghers as distinguished from that of the gildsmen—the functions of which passed, in part, to the crafts, but mainly to the select body and to the justices of the peace [6].

[1] Vol. ii. pp. 19, 20, 86, 106, 108, 131, 143, 144, 171, 193, 207, 213, 234, 235, 243, 257, 259, 269, 275, 390, 391; Man, Reading, 359; Davies, Southampton, 134, 135; English Gilds, 376–409; Rep. MSS. Com., 1885, App. v. 486; Duncumb, Heref., i. 359.

[2] Vol. ii. pp. 20, 56, 150, 176, 177; Allen, Liskeard, 280; Gribble, Barnst., ii. 356, 357; Palmer, Yarm., 52; Great Red Book of Bristol, fol. 6.

[3] Vol. ii. pp. 46, 79, 82, 244, 247; Izacke, Exeter, 58; Kent Archaeol. Soc., x. p. cxliv.; Peter. Laune., 200; Rep. MSS. Com., 1885, App. v. 285, 297.

[4] Vol. ii. pp. 37, 111, 183, 263, 272, 273, 352, 360; Simpson, Derby, 92, 93; Noake, Worc., 8; Hutchins, Dorset, i. 126; Bailey, Transcripts, 58; Munic. Corp. Com. 1835, p. 1636; Statutes of the Realm, 34 & 35 Hen. VIII, c. 18.

[5] Above, pp. 73, 75, 110–126.

[6] In some places the leet and the craft fraternities continued to exist side by side. See above, p. 132; vol. ii. pp. 273–275; Hodgson, Morpeth, 67, 68.

But even after the Gild Merchant and the borough had thus become identical, the old dual idea did not completely disappear, the Gild being often regarded as a particular phase or function of the town, namely, the municipality in its character of a trade monopoly[1]. Hence the modern survivals of the Gild Merchant help to elucidate its actual functions in ancient times.

In a few boroughs the select governing body of the town—the narrow civic corporation, in distinction from the burgesses or freemen at large—succeeded to the name and traditions of the Gild Merchant[2]. In some of these cases the signification of the latter gradually dwindled down to a periodical civic feast of the privileged few[3].

Only one more form of the later development of the Gild Merchant remains to be considered, namely, its transformation into a simple social-religious fraternity. This was manifestly the line of development at King's Lynn. The Gild of the Holy Trinity or the Great Gild of Lynn was doubtless a continuation of the old Gild Merchant granted to the town by King John, for the repose of whose soul the brethren still celebrated mass in 1370. As late as the reign of Henry VIII it still bore the name 'Gilda Mercatoria[4].' The alderman of the Gild, who was elected for life by the burgesses at large, was an important personage in the municipal polity. A charter of Henry V provided that at the annual town elections he should name four of the burgesses, who were to add eight others to their number; these twelve were then to choose the mayor and other town officers. It also enacted that if the mayor of Lynn should happen to die during his term of office, the alderman of the Holy Trinity Gild was to take his place[5].

[1] Vol. ii. pp. 19, 20, 53–56, 213, 257–270, 273–276; Stubbs, Const. Hist., iii. 610; Hist. of Guildford, 305.

[2] Andover, Guildford, and Windsor, afford good examples of this development. See vol. ii. pp. 104–106, 270–272, 344–348; Hist. of Guildford, 305. For Totnes, see Devon Assoc., vi. 104.

[3] Above, p. 10, n. 5; p. 11, n. 3; vol. ii. pp. 130, 131. Cf. also vol. ii. pp. 130, 131, 278, 279.

[4] Richards, Lynn, i. 468.

[5] Vol. ii. pp. 151, 379.

Having become a social-religious fraternity, it was dissolved by the Gild Statute of 1 Edward VI, its property passing into the hands of the corporation of the borough[1].

At Ipswich the development was somewhat similar. Though the old name 'Gilda Mercatoria' continued to be used as late as the seventeenth century, already in 1325 the fraternity had been re-organized as the Corpus Christi Gild, to which not only the laity of Ipswich but also the priors of two religious houses of the town and all the parish priests belonged. The main object of the newly constituted fraternity was to provide for the yearly procession on Corpus Christi Day, when the priests and trade companies marched through the town, the latter displaying their banners and pageants. After the procession came the feast, at which the brethren regaled themselves with wine and 'ffidlers'[2]. It is worthy of note that in Ipswich, as in Lynn, though the ancient functions of the Gild Merchant had disappeared, its social-religious successor was a quasi-official part of the civic polity. The two aldermen or gild-masters, who enjoyed the onerous privilege of being allowed to provide the annual banquet, were answerable to the bailiffs and portmen of Ipswich. Allowances of wine and money were sometimes made from the town treasury for the maintenance of the Gild. Various ordinances concerning the observance of its ceremonies were enacted from time to time in the burghal courts. The town maintained a 'guylde preste to syng and to pray for all the brethern and sistern.' Every burgess seems to have been a member of the fraternity; which still vegetated in the reign of James I, and finally degenerated into a dinner for the common council of the town—'the twelve' and 'the twenty-four[3].'

In 24 Henry VI the ancient Gild Merchant of Chichester was re-organized as the Gild of St. George, of which the mayor of the town was always to be master[4]. At Barnstaple

[1] Vol. ii. p. 170.

[2] Vol. ii. pp. 125–129; Wodderspoon, Memorials, 161–179.

[3] Vol. ii. pp. 129–132; Wodderspoon, 161–179.

[4] Above, p. 10, n. 6.

and Beverley, likewise, the Gild Merchant seems to have been transformed into a social-religious gild [1].

Thus, in modern times, the machinery of the Gild Merchant fell to pieces, but its name vaguely clung either to the aggregate of the craft fraternities, to the town polity as a whole, to the narrow governing corporation, or to a private social-religious gild.

In one and the same town the history of the word is sometimes different from the history of the institution itself, the name and traditions of the Gild Merchant going in one direction, and its actual functions in another. In Preston, for example, a new Company, as has been already stated [2], was established in 1628 for the maintenance of the trade monopoly. Now at that time the 'Gilda Mercatoria' of Preston still existed, but, as we shall soon see, its existence was merely formal, only a very vague notion of its ancient signification having survived.

The vagueness with which the term Gild Merchant was used in the reign of Queen Anne is admirably illustrated by a suit of the corporation of Winchester against a person called Wilks, for trading in the town without belonging to the Gild Merchant. One of the Justices said: '*Non constat* to us whether the Gild here be the whole town, or part of the town, or what part of the town, nor by what right there is any *gilda mercatoria* in this place [3].'

Vague and almost meaningless as the term had evidently become, it still tenaciously clung to some of the town muniments and national records. A curious and instructive example of this is afforded in 1705 by an 'Act for establishing ports and towns' in the English colony of Virginia. 'And because such a number of people as may be hoped will in process of time become inhabitants of these ports and towns, cannot expect to be supported without such regulations are made

[1] Vol. ii. pp. 14, 22. Cf. also vol. ii. pp. 277-279.
[2] Above, p. 121.
[3] Vol. ii. pp. 268–270.

and methods put in practice as are used in towns of other countrys; Be it enacted, That each town to be erected by virtue of this act be constituted, and every of them singly and apart is hereby constituted and established a free burgh, shall have a market at least twice a week, and a fair once a year, at such times as hereafter is appointed, shall have a merchant guild and community with all customs and libertys belonging to a free burgh,' etc.[1] One cannot help wondering what idea the denizens of the new world attached to such a grant of the Gild Merchant, concerning the signification of which the learned judges of the mother country had confessed their ignorance in the case of Winchester *v.* Wilks, only a few months before the passing of this Act.

In the eighteenth century we meet the word much less frequently than in the seventeenth; and toward the beginning of the present century it became very rare[2]. The Municipal Corporations Commission, in 1835, found it still used in only a few boroughs[3]. The remnants of the Gild Merchant and of the craft fraternities were rapidly vanishing before the new ideas of a more liberal age,—the age of *laissez faire*.

The onerous, self-destructive restrictions of gilds[4] were now

[1] Hening, Statutes of Virg., iii. 408.

[2] Above, pp. 9–20; vol. ii. pp. 2, 3, 107, 186, 200.

[3] See Munic. Corp. Com., Index, 1839, under the words 'guilds' and 'guild merchant'; ibid., Irel., 818, *et pass.* See also vol. ii. pp. 20, 28, 48, 58, 188, 201, 243, 270, 285. In 1835 there were some craft fraternities or trading companies still in existence at Alnwick, Bristol, Carlisle, Chester, Coventry, Durham, Gateshead, Haverfordwest, Kingston-on-Thames, Lichfield, Ludlow, Morpeth, Newcastle-upon-Tyne, Richmond, Ruthin, Shrewsbury, Southampton, Wells, and York (Munic. Corp. Com., 1835, pp. 1202, 1761, and Index, under 'companies'). In Ireland there were also many craft fraternities in 1835 (ibid., Irel., 348, *et pass.*). In 1837 we find associations of this kind at Worcester, Scarborough, and Salisbury (Rep. Record Com. 1837, pp. 479, 483, 511). In even more recent years we still meet with survivals of these bodies in Alnwick, Bristol, Carlisle, Chester, Coventry, Kendal, Newcastle, Oxford, Preston, Sheffield, York, and, above all, London. See vol. ii. pp. 28, 186, 285; Munic. Corp. Com. 1880, p. 603; Rep. MSS. Com., 1870, p. 101; 1881, p. 402; 1885, p. 312; Antiq. Magaz., v. 297; Ferguson and Nanson, Carl., 28, *et pass.*; Boase, Oxford, 38; Hunter, Hallamsh. (ed. Gatty), 219, 339; London Liv. Comp. Com., *passim*. In almost all of these last-mentioned places trade companies still exist, although most of them are in a moribund state.

[4] The description of the gilds in Britannia Languens, p. 355 (London,

being superseded by the stimulating measures of Chambers of Commerce[1]. More than six centuries elapsed before the enactment of Magna Carta that all merchants 'may go through England, by land and water, to buy and sell, free from all unjust imposts[2],' became a realised fact throughout the realm. The Municipal Corporations Act of 1835 provided that 'every person in any borough may keep any shop for the sale of all lawful wares and merchandizes by wholesale or retail, and use every lawful trade, occupation, mystery, and handicraft, for hire, gain, sale, or otherwise, within any borough[3].'

In a single town of England the Gild Merchant still subsists, but only as the shadow of its former self—a spectre from the distant past. At Preston the Gild Merchant has been 'celebrated' regularly once every twenty years for more than three centuries, on which occasions the burgesses renew their freedom and indulge in all the festivities of a civic carnival. The last Gild Merchant was held in 1882. There was then

1680) still applies to them down to the beginning of the present century: 'Thus are most of our ancient Corporations and Guilds become oppressive Oligarchies, excluding or discouraging the English Subjects from Trading in our greatest and best situated Towns, where the Markets are.'

[1] 'The formation of such Chambers has proved to be of invaluable advantage in forwarding the public good. They acquired honour and privileges for the towns, promoted commerce in every department, united divided interests, diffused a knowledge of economical principles, and paved the way to commercial extension.' (Levi, Chambers and Tribunals of Commerce, 9.) For the Chamber of Commerce of Bristol, which was established in 1823, see Munic. Corp. Com. 1835, p. 1208. The Chamber of Commerce of Limerick was created by a charter of Geo. III, June 2nd, 1815, 'and is [in 1835] in a great degree composed of the same members as the Guild of Merchants.' (Ibid., Irel., 349.) For an account of its enlightened policy early in the present century, see ibid., 408, 409.

[2] Magna Carta, § 41.

[3] Statutes, 5 & 6 William IV, c. 76, § 14. The first part of the section reads as follows: 'And whereas in divers cities, towns, and boroughs a certain custom hath prevailed, and certain bye laws hath been made, that no person, not being free of a city, town, or borough, or of certain guilds, mysteries, or trading companies within the same, or some or one of them, shall keep any shop or place for putting to show or sale any or certain wares or merchandize by way of retail or otherwise, or use any or certain trades, occupations, mysteries, or handicrafts for hire, gain, or sale within the same: Be it enacted that, notwithstanding any such custom or bye law, every person in any borough may keep any shop,' etc.

much feasting and dancing, there were gay processions of townsmen, and much talk of the glories of the past [1]. And yet how few even of the scholars and noblemen there assembled from various parts of Great Britain knew what an important *rôle* the Gild Merchant had played in the annals of English municipal history, what strange vicissitudes it had undergone, what a remarkable transformation the centuries had wrought in it.

[1] Vol. ii. pp. 200, 201.

APPENDIX A.

The Literature of English Gilds[1].

Dr. Brentano is commonly regarded as the chief authority on the general history of English gilds[2]. Wilda, from whom Brentano derived some of his leading ideas, touched upon the subject only incidentally, basing his conclusions wholly upon Madox's works[3], the Gild Statutes of Berwick[4], and Danish analogies. Fortuyn, in his book on the gilds of Europe, also devoted a chapter to England, but he took his data mainly from Wilda's 'Gildenwesen' and Hüllmann's 'Städtewesen[5].' Brentano was the first writer who attempted to give a full account of the general development of English gilds. To him, as the author who has exerted the greatest influence in moulding prevalent views on this subject, we must devote most of our attention in reviewing the literature of gilds.

The following are the salient points of Brentano's theory. The essence of the gild, the germ from which in later times it developed, already exists in the heathen sacrificial feasts, especially the family banquets, of the North (pp. lxviii.–lxix., lxxiv.). 'The family appears as the original and pattern type, after which all the later gilds were formed;' the latter are, in fact, derived from the former (pp. lxx., lxxx.). 'After the German tribes had settled in fixed abodes, the families dwelling in a certain district united themselves into common sacrificial assemblies. . . . When Christianity, together with its religious fraternities, came to the North, the latter amalgamated with

[1] The substance of this Appendix appeared in the English Historical Review, i. 780–784.

[2] Brentano's essay is prefixed to Toulmin Smith's English Gilds, 1870; it also appeared separately (London, 1870); and in German, 'Die Arbeitergilden der Gegenwart. Erster Band: Zur Geschichte der englischen Gewerkvereine.' Leipzig, 1871.

[3] For Madox's account of the gild merchant, see above, p. 1, n. 2.

[4] For the Berwick Statutes, see Appendix D.

[5] Hüllmann's account of the gilds in England is based mainly upon the few notices in Brady and Madox.

the heathen sacrificial societies which they found there, and from this union arose the religious gilds of the middle ages' (p. lxxxi.). England is their birthplace (pp. lvii., xcviii., cxcviii.). When the family could no longer afford legal protection against the encroachments of the magnates, 'unions of artificial-family members were formed for that purpose, as the state was not able to afford the needful help.' Thus originated frith gilds, 'in direct imitation of the family' (pp. lxx., lxxiv.–lxxix.). 'The whole body of full citizens, that is, of the possessors of portions of the town-lands of a certain value, the *civitas*, united itself everywhere into one gild, *convivium conjuratum*; the citizens and the gild became identical; and what was gild-law became the law of the town' (p. xciii.). From this frith gild or town gild emanated the municipal constitution (pp. lxxi., lxxvi.). 'As the towns flourished and increased in well-being, material differences in property must have arisen among the full citizens. . . . This led to the closing of the old gild which hitherto had existed alone in a town, by the side of which others then formed themselves with the same or similar ends' (pp. xcvi.–xcvii.). Collisions between these new bodies and the old fraternity finally led to their fusion into one gild, which thenceforth governed the town and was the base of the later burghal constitution (pp. xcix., cv.). 'The sooner a town became chiefly a commercial place, the sooner did the gild there take the character of a merchant-gild,' for example, London in Anglo-Saxon times (pp. xciii., cvi.). Craftsmen were originally admitted to the gild merchant, but as the members of the latter grew richer, they excluded the former from their fraternity and oppressed them (pp. cvii.–cviii.). These aggressions gave rise to the formation of craft gilds (p. cxv.), between which and the gild merchant a long struggle took place in the thirteenth and fourteenth centuries. 'In the time of King Henry VI the victory of the crafts was general in England' (p. cxii.). The overthrow of the craft gilds was due to the rise of large capital and its investment in manufacture (p. clxiii.). The new factory system caused the old regulations of trade by the craft gilds and by the Statute of 5 Elizabeth, c. 4, to fall into desuetude, much to the detriment of small masters and workmen. 'As soon as the disorganization spread and the gravest abuses became general, whilst a prospect of the maintenance of order by the state disappeared, the workmen formed their trade unions against the aggressions of the then rising manufacturing lords, as in earlier times the old freemen formed their frith gilds against the tyranny of medieval magnates,

and the free handicraftsmen their craft gilds against the aggressions of the old-burghers' (p. cxcv.).

Brentano does not refute the arguments of Wilda and Hartwig against the derivation of the earliest gilds from the sacrificial assemblies of the North. Their view that Christianity was the most important element entering into the origin of gilds, is more plausible. Nor can we adopt without reservation Brentano's theory that gilds emanated from the family. The truth is that when the old kin-bond (the 'maegth') dissolved, various new institutions arose, in the course of time, to take its place and to supply new wants—the mark, the town, the lord with his dependents, the gild, monastic bodies, knighthood, etc., and above them all the state. The dissolution of the 'maegth' was the occasion, not the cause, of the new order of things. We find striking resemblances to the family, much fraternal solidarity, etc., not merely in the gild but also in the mark community, the lordship's household, monasticism[1], and knighthood; and one may derive the latter from the family with as much reason as Brentano does the former.

More unfounded still is his assumption that England is the birthplace of gilds. It is difficult to reconcile this view with his derivation of gilds from the banquets of the North and from the family. As the bond between kinsmen was more enduring in England than on the Continent, one must infer that, according to Brentano's own theory, gilds would appear there earlier than in England. Their prevalence on this island in Anglo-Saxon times has been much exaggerated. It is doubtful whether the 'gegildan' of the laws of Ine and Alfred were real gild-brethren[2]. The presence of the root 'gild,' which has various significations[3], does not necessarily imply the existence of such a fraternity. Indisputable mention of gilds appears on the continent sooner than in England[4]. True the oldest

[1] Even the word 'familia' was applied to the aggregate of a lord's dependents and to the monastic community. See Du Cange, Gloss., under 'familia'; Liber de Hyda, 369. Writers have also noted the resemblance of the borough community, the ancient mark, etc., to the family (Gaupp, Stadtrechte, ii. p. xv.; Arch. Assoc., Journal, xxxviii. 368; Gierke, i. 90, 224; cf. Ludlow, Gilds, 354); but, while all these institutions superseded the ancient family, and became a necessity after its dissolution, it is wrong to say that they owe their origin to it. The gild and the family were radically different in their nature; the one was a voluntary and artificial, the other a natural, bond of union. For Bodin's views on this subject, see Baudrillart, Bodin et son Temps, 325.

[2] See below, p. 177.

[3] The Latin equivalents are 'sacrificium,' 'tributum,' 'societas,' etc. (Schmid, Gesetze, 589; below, p. 177.)

[4] See below, p. 175.

detailed statutes of these societies happen to come from England, where more toleration was accorded them, but this does not prove that they originated here.

As to the fine-spun theory as to the origin of the frith-gild in the encroachments of great proprietors and its union with new rival fraternities, we are asked to accept it wholly on faith. Brentano cannot give a single instance of an Anglo-Saxon frith-gild oppressed by rich magnates. Indeed, the term occurs only in one instance, that of London, and then we may translate it frith-gildsmen instead of frith-gilds. Whatever these 'frith-gegyldum' of the 'Judicia Civitatis Lundoniæ' may have been[1], there is no indication of a struggle among them, nothing is said of the amalgamation of various frith gilds into one, and no trace of them ever appears again in the history of London. The other example given by Brentano is that of Berwick in the years 1249–1294. But the Berwick statutes belong to the history of Scotland, where the general development of gilds was not the same as in England. Moreover, the union of fraternities at Berwick was probably an isolated, adventitious phenomenon. Then, too, a chasm of three and a half centuries separates the cases of London and Berwick. In the same connexion (e.g., p. xcix.) Brentano emphasises the identity of the Anglo-Saxon gild and town, gild-law and town-law, and the evolution of the latter from the former; but we look in vain for proofs. Positive assertions regarding such an important question cannot be accepted, and should not be made, without good documentary evidence to support them.

Concerning the influence of gilds in Anglo-Saxon times, there will probably always be great divergence of opinion on account of the meagreness of the sources. But data enough for their history in the Norman period can be found, if one will but assiduously search. That Brentano has not done this, is evident from his want of knowledge regarding the gild merchant and the crafts. The momentous struggle between the merchants and craftsmen, to which he ascribes the inception of craft gilds, either never took place in England, or was such an isolated, impotent phenomenon that it does not come to light in local records[2]. A contest of this sort could scarcely have occurred in a country where royalty ruled with so strong a hand. Moreover, though the crafts attained great influence, and constituted

[1] For some account of these 'Judicia,' see below, pp. 178–181.
[2] Above, pp. 109, 110.

an integral part of the common council, in some boroughs, especially in the larger towns of the North [1], there was never a domination of this element in the English municipal constitution, such as, according to Brentano, resulted from a victory over the gild merchant. The crafts in England were always controlled by the general town authorities, they never secured the political power and independence of the German 'Zünfte' or Flemish 'corporations [2].' Brentano has much to say about what occurred on the Continent, where the burghal development was very different from that of England; furthermore, he instances London, where the gild merchant is never mentioned, and where the development was decidedly aristocratic; and he adds the case of the tailors of Exeter, where likewise nothing is said in this connexion of the gild merchant, and where the victory remained with the civic authorities. Notwithstanding this paucity of evidence, and in face of the patent facts which disprove his theory, no earnest protest has ever been made in England against it [3].

In Brentano's chapter on the gild merchant we seek in vain for information concerning the nature of that important institution. The only sources mentioned for England are Wilda, Madox, and Smith's 'English Gilds,' which contain very meagre data for the study of the subject. The truth is that we do not find any traces of this gild until soon after the Norman Conquest, and then it is an organism having distinct functions in the burghal polity, identical neither with the whole 'civitas' nor with the ruling body of the latter [4]. The crafts, too, had their distinct functions to perform, and though we meet with isolated disputes between them and the town authorities, such as that at Exeter, and quite frequently with attempts of the rich to over-tallage 'the lesser folk [5],' it is probable that not a single instance can be cited of a conflict between the gild merchant and the crafts as such. The development in England was, in fact, just the reverse of that portrayed by Brentano; it was from government by a democratic burghal community to the exclusive sway of a narrow, aristocratic 'select body [6].' This is the great municipal revolution that took place in England, for the most part silently and gradually, from the fourteenth to the seventeenth centuries. We must, however, emphasise the fact that in the burghs of Scotland during the fifteenth and sixteenth centuries there really was a bitter struggle

[1] Above, pp. 111, 112.
[2] Above, p. 113.
[3] Above, p. 109, n. 3.
[4] Above, Chapter V.
[5] Above, pp. 110, 113.
[6] Above, p. 110.

between the gild merchant and the crafts, but, as has already been intimated, the municipal history of Scotland approaches more nearly that of the Continent than that of England [1].

In his exposition of the internal organization of English craft gilds, Brentano, like most writers on this subject, draws too much upon the history of London, which differed in many respects from that of other English towns. In the chapter on trades-unions he stands on firmer ground. He has gone to the proper sources for his statement of facts, and what he says on the subject merits careful consideration.

Among those who have done much to promulgate Brentano's theories may be mentioned Cornelius Walford [2]. His work on English gilds is not one of original research; regarding their general development and influence he has added nothing to our stock of knowledge. Still his compilation is not devoid of utility as a repertory of the views of others, and as a condensation of the valuable ordinances in Smith's English Gilds.

Dr. Salvioni, in his 'Gilde Inglesi [3],' has adopted most of Brentano's views, but presents them less incisively and less emphatically than the latter. Here and there he even ventures to differ from Brentano [4], who, nevertheless, is evidently his main source. More than one-third of the book (pp. 34–69) is devoted to a careful analysis of the statutes contained in Smith's 'English Gilds,' and this is certainly the most valuable portion of the work. On p. 87 he states that in studying this interesting topic, so intimately connected with the civil, social, and economical history of England, his object was merely 'to render familiar to Italian students certain materials, researches, and results obtained elsewhere,' in the hope that interest in similar investigations might thereby be awakened in Italy. This object he has accomplished in a satisfactory manner. He concludes with a comparison between English and Venetian gilds (pp. 87–90). Though he has repeated many of Brentano's errors, it must be said to his credit that he has followed the latter less servilely than many writers to whom the sources were more accessible.

[1] See Appendix D.

[2] His paper on 'Gilds' was reprinted from the Insurance Cyclopaedia, vol. v. 341–393. It also appeared in an enlarged form in the Antiquarian Magazine and Bibliographer, vols. i.–ix., 1881–1886. The enlarged work has been published under the title 'Gilds: their Origin,' etc. London, 1888.

[3] 'Le Gilde Inglesi. Studio storica del Dott. G. B. Salvioni.' Firenze, 1883.

[4] On p. 16, for example, he rejects the assumption that England is the birthplace of gilds.

The history of English Gilds is yet to be written[1]. Such important questions as the relation of the crafts to the town authorities, and the influence of these and other gilds upon the growth of the burghal constitution, have never yet been the object of comprehensive study, though materials in abundance to elucidate the same are to be found in town archives and in printed local histories. In the patient and logical investigation of them lies our only prospect of complete knowledge of the subject.

[1] Two books have very recently appeared which must be briefly noticed in this review of the literature of gilds. Seligman's Two Chapters on the Mediaeval Guilds of England (November, 1887), is a good compilation; Chapter I. ('The Guilds-Merchant') being based mainly on my 'Gilda Mercatoria' (Göttingen, 1883), and Chapter II. ('The Craft Guilds') owing much to Von Ochenkowski's England's wirthsch. Entwickelung. There is not a capital fact regarding the gild merchant in Chapter I. of Seligman's book which cannot be found in my dissertation of 1883. See the *Nation*, Numbers 1185, 1187, 1190. W. J. Ashley has just printed a useful general survey of the history of 'Merchant and Craft Gilds' in Chapter II. of his Introduction to English Economic History and Theory (London, 1888). His views on the relations of the gild merchant to the craft fraternities seem to me radically wrong; otherwise his account of the gilds is excellent.

APPENDIX B.

Anglo-Saxon Gilds.

The Gild Merchant has been so frequently identified with various Anglo-Saxon gilds that it is necessary for us to give a concise but comprehensive account of all that is known concerning the latter.

The gradual dissolution of the ancient family tie or kin-bond (the 'maegth') and the genesis of the institutions superseding it can be traced with less difficulty among the Anglo-Saxons than among any other people. When the social structure of the Anglo-Saxons is first discernible, in the dim light of the seventh and eighth centuries, its primitive constitution had already undergone profound modifications. The 'maegth' and the mark community had already merged in the township with individual ownership of land[1], though vestiges of the primitive structure still remained[2]. High above all families and communities there now existed the state with its laws. While the activity of the 'maegth' gradually diminished, that of the state and the local communities increased. The simple township ('tun' or 'vicus') often developed into the borough ('burh'); and the royal ealdorman became more prominent in shire and hundred. Meanwhile two more new social factors appeared, the lordship and the gild. Many freemen became the vassals or dependents of the landed proprietor, and called him their 'lord.' People also banded together into gilds, to the development of which the dark days of the Danish invasion were very conducive. The wants of the age, especially the protection of life and property, called into being new institutions to replace the once all-predominant and all-pervading bond of kindred[3].

[1] Stubbs, Const. Hist., i. 83–85.

[2] Ine, c. 42 and 43, § 1 (Schmid, Gesetze, 40; Thorpe, Laws, 55, 56); cf. Marquardsen, Haft und Bürgschaft, 10; Stubbs, Const. Hist., i. 93.

[3] The gild was simply one of various institutions that were at first accessory to the family and finally superseded the latter. Cf. above, p. 169. For various other arguments showing the untenability of Brentano's view that the gild emanated from the family or was simply an 'artificial family,' see Pappenheim, Altdän. Schutzgilden, 82–109. He

Almost all the factors alluded to above, the old as well as the new —family, town, lordship, and state—are found side by side in the 'Judicia Civitatis Lundoniae,' the statutes of the so-called London 'frith-gild' of Athelstan's reign. Before we discuss this interesting document, a few remarks must be made concerning the origin and nature of gilds in general.

Gilds may be briefly defined as voluntary associations for mutual support. The assertion, so often repeated, that England is their birthplace[1], is untenable. The earliest mention of this institution is to be found in the Carolingian Capitulary of the year 779[2]. Then and in the following century gilds evidently constituted no rare phenomenon in the Empire of the Franks[3]; whereas in England they are not mentioned before the ninth century. The priority of their appearance in the records of a country may be merely a fortuitous circumstance. Even conceding that they occur in the laws of Ine and Alfred, it is not right to infer that gilds first came into existence on British soil. If they were more prevalent and more fully developed among the Anglo-Saxons of the eleventh century than they were on the Continent, this was probably due to the indulgence of Anglo-Saxon kings, and to the results of the incursions of the Danes; and does not prove the English origin of the institution[4].

However erroneous Wilda's theory may be in its details, he is doubtless right in ascribing to Christianity a prominent part in the inception of gilds[5]. These did not originate in the heathen sacrificial or drinking feast of the ancient Teutons[6]. The latter lacks some of the most essential features of the medieval brotherhoods, especially their all-pervasive spirit of fraternal solidarity, their corporative organization, and the obligation of mutual assistance. Its meetings were either confined to a narrow circle of kinsmen or open to all comers. It was no permanent association, but, like the old English

points out, among other things, that in the family we have two fundamental ideas, subordination and co-ordination; in the gild, only one of these, namely, co-ordination or the idea of brotherhood.

[1] Brentano, English Gilds, pp. lvii., lxxiv., xcviii.; Wilda, Gildenwesen, 63, 64, 119, 244 (cf. Pappenheim, 213); Scrutton, Roman Law, 55, 56.

[2] Hartwig, Untersuchungen, 137. 'De sacramentis per gildonia invicem conjurantibus, ut nemo facere praesumat' (Pertz, Monum., Leges, i. 37).

[3] Hartwig, 138; Wilda, Gildenwesen, 39, 40; Wauters, Lib. Com., 138–140; Giry, St. Omer, 277.

[4] Cf. above, 169, 170; Pappenheim, 14–17.

[5] Wilda, Gildenwesen, 25–34, 63.

[6] Both Hartwig (p. 154) and Pappenheim (pp. 1–3) reject the view that gilds emanated from the old banquets of the North. Wilda (pp. 3–34) ascribes their origin to these heathen banquets and to the Christian Church.

wake, only a casual gathering; it was no close and enduring bond of union with well-defined rights and duties. Nor are gilds merely vestiges of the Roman 'collegia' (or 'sodalitates')[1]. The differences between the two institutions are more striking than the resemblances[2], the latter being common to every form of association in all ages. The medieval gilds are no more derived from the Romans or Scandinavian Teutons than are the Roman 'collegia' from the communal organization of the Hebraic Essenes[3], or modern clubs and trades-unions from the gilds. Every age has forms of association peculiar to itself which have grown up spontaneously. It is not necessary to seek for the germ of gilds in any antecedent age or institution. They doubtless originated spontaneously among Christians for mutual support in things temporal and spiritual,—for the mutual promotion of well-being in this world and in the next[4].

The religious element, a potent factor in the history of gilds from their birth to their final extinction, is an almost insurmountable obstacle to their logical classification; for, as Wilda rightly observes, every gild comprehended within itself a religious one[5]. They may be divided into the following groups:—the ecclesiastical or calendar

[1] Hartwig, Untersuchungen, 156. The view that gilds are derived from Roman times is maintained by Coote (Ordinances, *pass.*; Romans in Brit., 383–412), Pearson (Hist. of Engl., i. 44, 47, 274), and Wright (Celt, Roman, 425, 510). Cf. also Palgrave, Commonw., i. 628. They do not even prove that these 'collegia' were numerous in England. In fact, Pearson (i. 47) admits that the inscriptions found there are chiefly confined to the smiths. Cf. above, p. 85, n. 1.

[2] Some of the essential features of the medieval gild are wanting in the Roman 'collegia opificum' of the fourth and fifth centuries. These 'collegia' were not voluntary unions, but organizations imposed by the Roman government upon laborers. Religion and charity were not prominent features of these bodies. For the 'collegia,' see Mommsen, De Collegiis, etc.; Boissier, Collèges fun. Rom.; Coote, Romans in Brit., 383–396; Pancirollus, De Corporibus Artificum; Codex Theod., xiii., xiv.; Polit. Science Quart., ii. 494–513; Massmann, Libellus Aur., 75–86; Seligman, 50; and the references given in London Liv. Comp. Com. 1884, i. 8.

[3] For the communities of the Essenes, see Graetz, Gesch. der Juden, iii. 96.

[4] The most recent important contribution to the general history of gilds is Pappenheim's Altdänische Schutzgilden. He maintains that the Danish gilds originated in the old Northern 'sworn-brotherhood,' 'Blutsbrüderschaft,' 'fostbraeðra-lag.' This was a compact entered into by two or more persons, each of whom solemnly swore to revenge any injury done to the other. They first walked beneath a strip of turf, the ends of which remained fastened to the ground; then they mingled some of their blood in a foot-print (*spör*) beneath the strip of turf; and the ceremony was completed by exchanging the oath of brotherhood. Pappenheim (pp. 18–54) believes that the early Danish gilds were derived from this institution because the name brother, the element of revenge, and the idea of mutual help, are common to both.

[5] Wilda, Gildenw., 344.

gilds, made up entirely or in great part of the clergy; social-religious gilds, established for the performance of religious exercises and good works, often including also other objects, such as the protection of life and property; trade gilds, which may be separated into merchant gilds and craft or artisan gilds.

I have said that no Anglo-Saxon gilds are mentioned before the ninth century. But some continental and almost all English writers claim that the 'gegildan' of the laws of Ine and Alfred were brethren of such fraternities[1]. Waitz is the only one who attempts to prove this hypothesis; his arguments, however, are not convincing[2]. The others seem to think that the word by itself is all the proof needed. But 'gild' has various different meanings ('sacrificium' or 'adoratio,' 'tributum,' and 'societas'[3]), and is of common occurrence in simple and compound words that do not refer to associations of any kind[4]. Many other cogent objections to their view have been advanced, above all, the following by Kemble:—'It is perfectly clear that a law expressed in such general terms as these, cannot be directed to a particular and exceptional condition; that it does not apply to the accidental existence of gegyldan, but on the contrary

[1] Ine, c. 16, 21; Alfred, c. 27, 28 (Schmid, Gesetze, 28, 30, 86; Thorpe, Laws, 35, 49, 50). For various explanations of these passages, see Waitz, Verf., i. 461–466; Stubbs, Const. Hist., i. 89, 414; Schmid, Gesetze, 588; Brentano, Engl. Gilds, lxxiv.; Lappenberg, Engl., i. 589; Marquardsen, Haft, 26–34; Coote, Ordin., 18; Schaumann, 561; Fortuyn, 87; Thorpe, Dip. Angl., p. xvii.; Salvioni, Gilde Inglesi, 8, 9; Gierke, Genossensch., i. 224–225; Smith, Crown House, 28; Sullivan, Lectures, p. ccxii.; Kemble, Saxons, i. 238–240; Maurer, Rechtsverhältn., i. 91, 92; Hartwig, Unters., 136; Wilda, Strafrecht, 389; Yeats, 179; Sachsse, Grundlagen, 538; Cox, Elections, 135; Philipps, Angels. Recht, 98; Pike, Crime, i. 57, 438; Drioux, Associations, 111.

[2] He holds that they were gilds of strangers. The main objection to this theory is that Ine, c. 21, implies that the 'gegilda' had relatives ('his maegas') living in the neighbourhood.

[3] Leo, Glossar, 250; Bosworth, Dict., *s. v.* 'gild.' On the Continent and in Wales the word also signified a banquet. See Vigfusson, Icel. Dict., 199; Pappenheim, Schutzgilden, 63, 64, 114, 120; Wedgwood, Dict., 322; Möbius, Glossar, *s. v.* 'gildi'; Adelung, Wörterb., *s. v.* 'gild.'

[4] For example, 'deofol-gild' (Alfred, Introd., c. 49, § 5; Schmid, Gesetze, 66, 554; Thorpe, Laws, 26) means simply devil-worship, or heathen sacrifices. This is also referred to in a letter of Pope Gregory to Mellitus (Bede, Eccles. Hist., i. c. 30). Cf. 'Gif ceorl . . . deoflum gelde,' where the verb 'gelde' has a similar meaning (Withrad, c. 12; Schmid, 16; Thorpe, 18). See also Leo, Glossar, 250; Emerton, Introd., 155; Pappenheim, 18. Cf. also the following passages in Charlemagne's Capitulary of 785 relating to the Saxons:—'Si quis hominem diabulo sacrificaverit et in hostiam more paganorum dæmonibus obtulerit, morte moriatur'; 'Si quis . . . ad honorem dæmonum commederet,' etc. (Pertz, Leges, i. 49.)

assumes every man to have such: we cannot therefore construe it of voluntary association formed for religious, social, or funereal objects[1].' I shall not venture to expound any new theory as to what these 'gegildan' really were. Probably Schmid's view, vague and unsatisfactory though it be, is as near the truth as we shall ever get, namely, that they were 'geld-comrades' ('Zahlungsgenossen')[2], those who mutually paid for one another[3], the information in the sources being too meagre to permit us to define their functions with more exactness.

The 'Judicia Civitatis Lundoniae,' made during Athelstan's reign[4], are a collection of ordinances, 'which,' as the preamble asserts, 'the bishops and reeves belonging to London, have ordained and with pledges ("weddum," "vadia") confirmed, among our frith-gildsmen ("friδ-gegyldum") both "eorlish" and "ceorlish," as an addition to the laws established at Greatanlea and Exeter and Thunresfeld. The various enactments that follow are directed against thieves. The penalties imposed upon the latter and the measures taken to bring them to justice are minutely detailed. Provision was made for a common purse, from which stolen property was to be replaced. All were bound to co-operate in pursuing persons guilty of theft.

These 'Judicia' are commonly regarded as the statutes of a London gild. Certain minor clauses have something of the flavour of such an association; but if we examine the document in its

[1] Kemble, Saxons, i. 238, 239; cf. Marquardsen, Haft, 33.

[2] 'Gildan' in the sense of 'pay' often occurs in the Anglo-Saxon records. See Schmid, Gesetze, 160, 162, 603; Thorpe, Dip. Angl., 606–614. Cf. above, p. 59.

[3] Schmid, Gesetze, 589. Kemble (Saxons, i. 240) says: 'I look upon gegyldan as representing those who mutually pay for one another; that is, under a system of pecuniary mulcts, those who are mutually responsible before the law,—the associates in the tithing and the hundred.' Cf. below, p. 190, n. 11.

[4] Schmid, Gesetze, 157–172; Thorpe, Laws, 97–103. For various brief comments on these 'Judicia,' see Stubbs, Const. Hist., i. 414; Wilda, Gildenw., 245–247; Gierke, Genoss., i. 229, 230, 233; Waitz, Verf., i. 462; Schmid, Gesetze, pp. xlvi.–xlvii., 588; Kemble, Saxons, i. 241; Marquardsen, 37, *et seq.*; Cox, Elections, 135; Norton, Commentaries, 19, 24, 25; Thorpe, Dip. Angl., p. xvii., and Laws, Glossary, *s. v.* 'frith-gild'; Maurer, Rechtsverh., i. 94; Coote, Ordin., 9–12, and Romans in Brit., 397–402; Maurer, Mark Courts, 57; Fortuyn, 88; Palgrave, Commonw., i. 195, 633; Salvioni, Gilde, 9, 10; Green, Conq. of Engl., 460, 461; Brentano, Engl. Gilds, p. lxxv.; Walford, Gilds, 55–57.

entirety, this view appears untenable. For a gild is pre-eminently a voluntary organization[1], the result of private action, and not of public legislation. Now it is evident that the 'Judicia' do not belong to such a body, but are simply a supplement to the general laws of the kingdom regarding theft, as is distinctly asserted in the preamble already cited[2]. The ordinances provide for a peculiar public police establishment, rather than for a close private association. In further confirmation of this view we find them incorporated among the other laws of the kingdom; they emanate from the public authorities, the king's officers, not from persons privately banded together[3]; and all the inhabitants of the city and its suburbs are bound by the enactments[4]. That we are here dealing with no regulations of a private and voluntary nature, but with public law and public obligations, is even more plainly shown by the following clause of the 'Judicia':—'If we are negligent as regards the peace ("friтð") and the pledge ("wed") which we have given and *which the King has commanded* of us ("þe we seald habbað, and se cyng us beboden hafað"), then may we believe or well know that these thieves will prevail even more than they did before. But let us rather keep our pledges and the peace as is pleasing to our lord [the King]. It greatly behoves us to execute that which he wills, and if he bids and orders more, we shall be humbly ready[5].'

Two of these ordinances are generally emphasised as being those of a gild. In c. 8, § 6 of the 'Judicia' it is ordered that if anyone who has given his pledge should die, each 'gegilda' should provide a loaf for the defunct's soul, and sing, or procure to be sung, fifty psalms. It must be admitted that this is an enactment similar to those made by later gilds. But prayers for the dead were not confined to such fraternities. It is a well-known fact that in those days men took advantage of every opportunity to provide for their salvation after death by vicarious orisons[6]. In the reign of Alfred

[1] Cf. Gierke, Genoss., i. 226, 235; Vanderkindere, Magistrats, 6; Kemble, Saxons, i. 239.

[2] Chapters 9–12 of the 'Judicia' are taken almost verbatim from earlier public laws. Cf. Schmid, Gesetze, xlvii.

[3] The 'bishops and reeves' who 'ordained' these 'Judicia' were royal officers. Cf. c. 11 (Schmid, 170; Thorpe, 102) and Anglo-Saxon Chronicles, anno 886. Note also the plural 'bishops'; evidently the king sent at least one other bishop to sit with the bishop of London in this assembly. Stubbs rightly refers to the 'Judicia' as an 'attempt on the part of the public authorities to supplement the defective execution of the law' (Const. Hist., i. 414).

[4] C. 8, § 4; cf. Wilda, Gildenw., 246.

[5] C. 8, § 9 (Schmid, 168; Thorpe, 101–102).

[6] Rettberg, Kirchengesch., ii. 788; Rock, Church of our Fathers, ii. 378.

half the revenue of the town of Worcester was given away in exchange for a few 'de profundis[1].' The other so-called gild-clause, c. 8, § 1, is not at all consistent with the true gild spirit. It prescribes that the eleven[2] officers of the hundred ('hynden') are to assemble once a month to superintend the execution of the ordinances. Then as now the Teutons seldom came together without eating and drinking[3]. Accordingly it is directed that at these monthly meetings there should be 'butt-filling' (i. e. ale-making) and a repast ('met-scype') for the eleven, the other townsmen being evidently excluded from the feast — a very unbrotherly and ungild-like regulation. Both the religious and the festive features of the 'Judicia' are thus of an incidental character, such as we might expect to find in the early middle ages among neighbours united in the performance of common duties imposed upon them by the laws of the land. Even if these statutes accentuated good works and feasting more strongly, we could not call them the enactments of a gild, because they bear too plainly the imprint of public law. The same reason would prevent us from classifying the Norman frank-pledge under the head of gilds, even if it had been replete with devotional exercises and festive observances.

Thus when we compare the 'Judicia Civitatis Lundoniae' with the statutes of Anglo-Saxon and other gilds, and perceive how the former bear the imprint of public legislation, how little of the true gild atmosphere pervades them, how few characteristic gild traits they contain, and how questionable these few are, we must maintain that they are not the ordinances of a real gild, even though we may admit the possibility that some already existing fraternity was used as a partial model or even directly utilised by the public authorities to attain their end. It is more probable that 'gegilda' in the 'Judicia' is used in the same sense as in the laws of Ine and Alfred, that is to say, as far as the paucity of the sources will enable us to surmise, in the sense of comrades mutually responsible for 'gelds'

[1] Thorpe, Dipl. Angl., 136–138.

[2] The text of the document reads 'twelve,' but this is evidently an error. See Schmid, Gesetze, 615; Thorpe, Laws, Glossary, *s. v.* 'hynden.' The eleven officers were the ten heads ('yldestan') of ten tithings, and the 'hynden-man,' who had the general supervision over the hundred, *i. e.* ten tithings. Cf. c. 3; Kemble, Saxons, i. 238, 244; Waitz, Verf., i. 466; Marquardsen, Haft, 39. Schmid (Gesetze, 615) and Thorpe (Laws, Gloss., *s. v.* 'hynden') think that 'hynden-man' here means the head of the tithing; but this construction makes the passage difficult to understand.

[3] See below, p. 190, n. 9.

or payments, including perhaps fines for breach of law[1]. The words employed by Wilda in another connection apply with equal propriety to these London ordinances:—'The spirit of association which permeated the middle ages and bound together in closely organized societies all who had common aspirations and common interests,' manifested itself likewise in the regulations adopted by the king and his witenagemot for the metropolis, 'but they are destitute of very much that necessarily belongs to the essential nature of the gild, according to the historical development of that conception[2].'

To bolster up an untenable theory regarding the general development of the English municipality, some writers have also discovered a resemblance between this London organization and a much later union of the Berwick gilds into one great town fraternity or gild merchant (1249–94[3]). But the 'Judicia' do not record any union of existing societies[4]; and it cannot be shown with any degree of probability that this was anything more than a very transient movement, much less that it exerted any influence upon the municipal constitution of London[5]. We hear of it for the first and last time in the reign of Athelstan. As far as can be learned, no trace of it is to be found in any later institution[6]. It certainly was no gild merchant, no allusion being made to trade.

There are still extant the Anglo-Saxon statutes of four social-religious gilds that flourished at Cambridge, Abbotsbury, Exeter, and Woodbury[7]. These records probably date from the first half

[1] See above, p. 178, n. 3.

[2] Wilda, Gildenw., 69.

[3] Brentano, Engl. Gilds, xcix., c.; Wilda, Gildenw., 247, 248. Cf. above, p. 170. For the Berwick fraternity, see App. D.

[4] Cf. Marquardsen, Haft, 41; Norton, Comment., 19, 25.

[5] 'At least, there is documentary evidence,' says Brentano (Engl. Gilds, xcix.), 'that the constitution of the City was based upon a Gild.' Brentano evidently refers to the 'Judicia,' and bases his conclusion upon second-hand authorities,—the erroneous inferences of Wilda and Hüllmann. Hartwig (Untersuch., 162) makes the same mistake:—'Wir wissen ja dass in England die Statuten eines solchen Privatvereins [*i.e.* the 'Judicia'] die Grundlage einer Stadtverfassung geworden sind.' We know nothing of the sort. The authors cited do not even attempt to prove this assertion.

[6] Cf. Norton, Comment., 25.

[7] All these statutes are printed, with a translation, in Thorpe, Dip. Angl., 605–617; and all, excepting those of Orcy's gild of Abbotsbury, in Hickes, Dissertatio, 18–22. The statutes of Orcy's gild are also printed in Kemble, Cod. Dip., iv. 277; those of the Woodbury gild, in Earle's Land Charters, 264; those of the Cambridge and Exeter

of the eleventh century [1], being the oldest gild statutes in existence. The thanes' gild of Cambridge shows plainly how the new bond of fellowship partially superseded the old tie of kindred. For the object of this fraternity is to provide for the payment of the old blood-compensation ('wer-geld'), in case a gildsman kills another 'without wantonness and without guile'; to exact the same in case a gildsman is slain; and to participate in all feuds resulting from a repudiation of the 'wer-geld.' This is probably all that is referred to in the general statement of the preamble, 'that the whole society should ever support him who has the most right.' Stubbs makes the scope of the association more comprehensive, including within its objects mutual assistance in case of theft [2], and thus giving it more of the character of a public police establishment. Some such conclusion might be drawn from Kemble's translation of the document, not however from the original text. No mention of theft occurs in the latter [3]. Thorpe's emendation of fellow ('gefera'), in the sense of gild-brother, in the place of reeve ('gerefa'), is also worthy of acceptance [4]. Thus we must regard this association at Cambridge as a purely social-religious gild, destitute of all public functions.

In Orcy's gild at Abbotsbury and in the brotherhoods at Exeter and Woodbury the religious element is pre-eminent, the chief object of the brethren's solicitude being the salvation of their souls. The fraternity at Exeter also extended assistance in the case of conflagra-

gilds, in Coote's Romans in Brit., 402–409, and in the 'Pièces Justificatives' of Thierry's Récits. A translation of the statutes of the gilds at Abbotsbury, Cambridge, and Exeter will also be found in Kemble, Saxons, i. 511–514. For various comments, see Stubbs, Const. Hist., i. 412–414; Gneist, Verf., 125; Gierke, Genoss., i. 228–233; Wilda, Gildenw., 38, 43, 65; English Gilds, xviii., lxv.; Turner, Anglo-S., iii. 98–101; Coote, Ordin., 12–18, and Romans in Brit., 402–409; Maurer, Rechtsverh., i. 93–96; Lappenberg, Engl., i. 610, 612; Walford, Gilds, 57–63; Winzer, Brüdersch., 79; Salvioni, Gilde, 11–14.

[1] Cf. Stubbs, i. 413; Hartwig, Unters., 136; Cooper, Cambr., i. 15. The Woodbury statutes belong to the second half of the eleventh century. They mention Osbern, Bishop of Exeter, 1072–1103 (Le Neve, Fasti, i. 367; Monast. Angl., ii. 515).

[2] Stubbs, Const. Hist., i. 414.

[3] The corresponding words of the text are: 'and gyf hwa gyldan of-stlea' (Thorpe, Dip. Angl., 611). The context also shows that the reference is to 'killing,' not 'stealing'; for in another part of the document the same sum (eight pounds) is given as the penalty for the killing of a gildsman.

[4] In the London 'Judicia,' c. 1, § 1, 'geref-scipe' is also erroneously written for 'gefer-scipe,' the latter form of the word being given in the same passage. Schmid, Gesetze, 156, 588; Thorpe, Laws, 97. Cf. Philipps, Angels. Recht, 78, 79.

tion. The Woodbury gild had among its members the Bishop (Osbern) and the canons of Exeter. Feasting, psalm-singing, escorting the dead to the grave, the solemn entrance-oath, fines for neglect of duty and for unseemly behaviour, contributions to a common purse, mutual assistance in distress, the gild-hall, periodical meetings called the 'morgen-spaec[1]'—in short, all the characteristics of later gilds, appear in the statutes of these four fraternities.

One of the earliest and most prevalent of Anglo-Saxon fraternities was the cnihts' gild, which existed in some of the principal cities of England in the ninth, tenth, and eleventh centuries. Let us first try to determine what the term cniht signifies. In early Anglo-Saxon times it meant boy or servant ('puer,' 'servus'[2]); but in the ninth or tenth century it acquired a new signification.

In the statutes of the Exeter and Cambridge gilds, referred to above, the cniht appears as a kind of subordinate member. The 'gegilda' of the Exeter fraternity contributes to the common stock two measures ('sesters') of malt, but the cniht contributes only one measure of malt together with some honey. If any cniht belonging to the thanes' gild of Cambridge draws a weapon, his lord ('hlaford') is to pay a fine of one pound, and get what he can [from his cniht]; 'and let the whole fraternity ("gild-scipe") aid him in recovering his money. And if a cniht wound another, let the lord avenge it and all the fraternity together; so that seek whatever he may seek, he have not life. If a cniht sits in anyone's way ("binnan stig")[3], let him pay a measure of honey.'

Other sources of the tenth and eleventh centuries help us to form a clearer idea of the status of a cniht. Though he ranks above a 'ceorl,' he is always in the service of some lord; he belongs to the latter's household ('hired' or 'familia'[4]). But he is not a menial

[1] For the gild-hall ('gegyldhealle'), see Kemble, Codex Dip., iv. 277, and Thorpe, Dip. Angl., 605; the 'morgen-spaec' occurs in the statutes of the Cambridge gild.

[2] Leo, Glossar, 441; Bosworth, Dict., *s.v.* 'cniht'; Skeat, Dict., *s.v.* 'knight.'

[3] In later gilds we often find regulations requiring members to keep their seats. See above, p. 27, note 2.

[4] 'And Lofwine aeðelinges discðen and Aelfget and Aelfwerd his cnihtas and ealle ðe geoðre hired men' (Kemble, Cod. Dip., vi. 155). 'And minum hired cnihtum,' etc. (Liber de Hyda, 254). See also Kemble, Cod. Dip., iii. 49, 51–54, 159–168, iv. 269, vi. 197; Thorpe, Dip. Angl., 571; Robertson, Scotl. under Early Kings, ii. 311.

dependent; he is evidently often on very familiar terms with his superior. We find the cniht mentioned in his lord's will side by side with the latter's children and most trusty household functionaries[1], sharing, with these, bequests of money, jewels, and lands. Athelstan Atheling, for example, bequeathed to his cniht Athelwine the sword 'that he erst gave me[2].' Sometimes the cniht held lands of his lord by a temporary tenure, but there was a natural tendency for this to become permanent. Bishop Oswald invested his cnihts with land, which, he directed, should pass to certain of their heirs and then revert again to the church[3]. The cniht Almer was given land which he already held[4]; and the cniht Wulfgar 'all [the land] as his father had acquired it[5].' The cniht 'of' ('aet') such and such a place is often mentioned[6], as though he were permanently identified with the estate named. The cniht's lord is generally some person of high rank, often a bishop or atheling[7]. Finally we may remark that the cniht appears armed with a sword, like a nobleman[8]. He was not a mere 'page' or 'servant'[9], but the armed attendant or military retainer of some great lord[10].

It is a mistake to completely identify the cniht with the Anglo-Saxon 'thegn' or with the Norman 'miles.' In the Anglo-Saxon Chronicles, under the year 1087, we find a reference to archbishops, bishops, abbots, earls, 'thegenas and cnihtas[11].' In the Cambridge

[1] Kemble, Cod. Dip., iii. 295, iv. 269, 288; Thorpe, Dip. Angl., 545, 559–561, 573, 574.

[2] Kemble, Cod. Dip., iii. 363: Thorpe, Dip. Angl., 561. For various other bequests made by lords to their cnihts, see Kemble, Cod. Dip., iii. 272, 295, 362, 363, iv. 269, 288; Thorpe, Dip. Angl., 521, 531, 559, 560, 568, 575; Earle, Land Charters, 219, 225, 227, 238, 241, 366; Turner, Anglo-Saxons, iii. 127. Athelmar 'dux' left 'minum hired cnihtum v. pund to gedule' (*circa* A.D. 1000. Liber de Hyda, 254).

[3] Kemble, Cod. Dip., iii. 49, 50, 159, *et seq.*, 259. Cf. Earle, Land Charters, 238.

[4] Thorpe, Dip. Angl., 559, 560.

[5] Ibid., 545. In 956 two cnihts of Canterbury sold their lands (Somner, Cant., i. 178).

[6] Kemble, Cod. Dip., vi. 184; Thorpe, Dip. Angl., 377, 378; Palgrave, Commonw., ii. p. cccIxxviii., n. 9.

[7] Kemble, Cod. Dip., iii. 49, 50, 159, 295, 363, iv. 269, vi. 155, 197; Thorpe, Dip. Angl., 531, 543–545, 559, 561, 568, 575; Liber de Hyda, 256; Earle, Land Charters, 238.

[8] Kemble, Cod. Dip., iii. 363; Thorpe, Dip. Angl., 561, 612; Coote, Romans in Brit., 405.

[9] Thorpe calls the cniht a 'page' (Dip. Angl., 530, 559, 575); Kemble gives the following equivalents: 'servants,' 'young men,' 'young freemen who were not full citizens,' and 'young nobles' (Saxons, i. 513, 514, ii. 335). Cf. also Stubbs, Const. Hist., i. 366.

[10] Cf. Robertson, Scotl. under Early Kings, ii. 136.

[11] 'Cnihts' are mentioned in other parts of the Chronicles; see Earle, Saxon Chron., 391.

gild statutes the cniht as such is distinguished from the 'thegn.' But these very statutes show that no great gulf separated the two. Both are members of the same fraternity, and both apparently thegns, though the one was subordinate to the other. It is evident that this subordination could not have been very great, for the whole gild was to help the lord to secure the penalty from his offending cniht. That the latter ranked as a thegn, may also be inferred from other documents [1]. He was generally a thegn's thegn—probably identical with the 'lesser thegn' of Cnute's Laws [2] and the 'rad-cniht' of Domesday [3]. The 'rad-cniht' is defined by old glossarists as a freeman who served his lord on horse [4]. Both the thegn κατ' ἐξοχήν and the cniht were included under the generic terms 'minister' and 'miles' [5]; but 'miles' seems gradually to have been applied with preference to the cniht [6].

It is probable that thegns often engaged in commerce and constituted a prominent element in the burghal community. The merchant who made three voyages across the ocean at his own cost became a thegn [7]. Domesday mentions twelve magistrates or lawmen ('lagemanni') at Lincoln and Stamford [8], who probably reckoned as thegns; this was certainly the rank of the 'lagemanni' of Cambridge [9]. A similar body at Shrewsbury in the thirteenth century is called 'the [twelve] theynesmen [10];' and another at Corfe Castle still later, 'the

[1] Two cnihts named Wulfric are mentioned in Thorpe's Dip. Angl., 375–378, one of whom was probably the son of the 'thegn' Wulfstan, spoken of in the same document. See also Palgrave, Commonw., i. 578, ii. p. ccclxxviii.

[2] 'Ex mediocribus hominibus quos Angli laes-þegnas nuncupant, Dani vero yoong-men vocant' (Schmid, Gesetze, 318; Thorpe, Laws, 183). Cf. Schmid, 388, 668; Ellis, Introd., i. 45.

[3] Ellis, Introd., i. 72–74; Morgan, Norman Occup., 115, 116.

[4] Ellis, Introd., i. 74; Morgan, Norman Occupation, 116. An ancient codex makes 'rad-cniht' equivalent to the 'six-hynden man' of Alfred's laws (Schmid, Gesetze, 93, 668). Cf. raede-cempa = equester; rade-here = equitatus; rad = ride (Wright, Vocab., i. 228; Leo, Glossar, 122, 325).

[5] Palgrave, Commonw., i. 578; Robertson, Scotl. under Early Kings, ii. 136, 456; Stubbs, Const. Hist. i. 155, 156; Turner, Anglo-Sax., iii. 125. In the documents printed in Kemble, Cod. Dip., iii. 49–54, 159–168, 'cniht,' 'minister,' and 'meus fidelis,' are evidently used as synonyms.

[6] Turner, Anglo-Sax., iii. 124–129; Stubbs, i. 366; Schmid, 666; Coote, Romans in Brit., 405. The cnihts are called 'milites stipendiarii' in an ancient translation of an Anglo-Saxon charter about A.D. 1000 (Liber de Hyda, 256, 257). See also below, p. 187, n. 1, 5.

[7] 'þegen-rihtes weorðe' (Schmid, Gesetze, 390; Thorpe, Laws, 81).

[8] Domesday Book, i. 336 a, 336 b.

[9] 'De harieta Lagemannorum habuit isdem Picot viii. lib. et unum palefridum et unius militis arma' (Domesday, i. 189 a).

[10] Owen and Blakeway, Shrewsb., i. 104.

eight barons[1].' The term 'burg-thegn' is by no means uncommon[2]; it is doubtless the equivalent of the later civic 'barones,' such as existed at Chester, Warwick, York, the Cinque Ports, and London[3]. The 'liths-men' (ship-owners) of London, who with others raised Harold to the throne[4], were doubtless such 'burg-thegns.' Citizens serving the king on horse[5] and 'rad-cnihts[6]' are referred to in connection with the boroughs of Domesday. In the Anglo-Saxon charters cnihts are often witnesses side by side with the port-reeve, where in other similar documents we find the 'cives' at large or the 'burh-ware[7].' There can be no doubt that many cnihts participated in commerce and in the management of burghal affairs.

The cnihts' gild of which we have the most detailed account is the 'Anglica cnihtene-gild' of London[8]. Our information regarding it is extracted from the Letter Books of the London City Corporation; the details given in the City archives were transcribed from the chartulary of the Holy Trinity Priory[9]. A strong flavour of the fabulous element pervades the story of the origin of this gild. In the days of Cnut, king of England, there were thirteen cnihts very dear to the king and to the realm, who besought Cnut to give them a certain portion of land in the eastern part of London—forsaken by reason of too much service—and, with it, the liberty of a gild for ever. The king willingly assented on condition that each of them should victoriously fight three combats, viz. above ground, below it, and in the water, and that afterwards on a certain day, in the field called

[1] Hutchins, Dorset, i. 472.

[2] Kemble, Cod. Dip., iv. 133, 212–214, 219, 221. For the thanes of the Five Danish Burghs, see Palgrave, Commonw., i. 644. The 'wic-gerefa' of Winchester is called a king's thegn in the Anglo-Saxon Chronicles under the year 897.

[3] Spelman, Gloss., *s.v.* 'baro'; Burrows, Cinque Ports, 77–79, 165.

[4] Anglo-Saxon Chronicles, anno 1036.

[5] Domesday, i. 56, 179, 252 (Wallingford, Hereford, Shrewsbury). 'Equites' of Nottingham are also mentioned (ibid., 280).

[6] Above, p. 185, n. 3.

[7] Kemble, Cod. Dip., ii. 83, vi. 155, 184; Thorpe, Dip. Angl., 128, 377, 633; Turner, Anglo-Saxons, iii. 129; Hickes, Ling. Vett., i. p. xxi. Cf. Kemble, Cod. Dip., iv. 117, 270, 285, vi. 180, 207; Thorpe, Dip. Angl., 303, 350, 372, 510, 641. The status of the cnihts in the boroughs of England calls to mind Nitzsch's theory regarding the 'ministeriales' in German towns (Nitzsch, Ministerialität und Bürgerthum im 11. und 12. Jahrhundert).

[8] See above, pp. 78–80; Coote, English Gild of Knights; Loftie, Hist. of London, i. 98, 99; Stow, London, 115–117; Maitland, London, ii. 1011–1013; Stubbs, Const. Hist., i. 404–406; Wilda, Gildenwesen, 247, 248; Norton, Comment., 25; Madox, Firma Burgi, 23, 30.

[9] This chartulary was formerly in the possession of John Anstis or Thomas Astle (Monast. Angl., vi. 151, 155). As far as I can learn, it is no longer in existence.

East Smithfield, they should contend with lances against all comers. These conditions were gloriously fulfilled. And on the said day the king invested them with the name of cnihten gild[1]. Edward the Confessor gave them a charter, granting that they might have their manorial jurisdiction ('socn'), and be as worthy of good laws as they were in the days of Edgar, Ethelred, and Cnut; and that no man should wrong them, but that they should all be in peace[2]. William I, William II, and Henry I confirmed to the men of the 'cnihtene gilda' their gild and land and customs, as they had them in the time of King Edward (the Confessor[3]). We next hear of the fraternity in 1125, when certain burgesses of London, fifteen in number, 'from the ancient progeny of noble English cnihts,' assembled in the chapter-house of the Holy Trinity near Aldgate, and gave to that church and the canons thereof the land and soke[4] called 'Anglissh Cnihtegilda,' outside that gate, extending to the Thames; in return for which donation they were admitted into the monastery. To strengthen the agreement they offered up on the altar of Holy Trinity Church the charter of Edward and their other charters, and sent Orgar the Proud ('le Prude'), one of their number, to King Henry, praying him to confirm their gift; which the King did[5].

[1] 'Temporibus Knwti Regis Anglorum fuerunt tresdecim milites, regi et regno multum amabiles, qui quandam terram in orientali parte London[ie], ab incolis pro nimia seruitute derelictam, a rege petierunt, quatenus predictam terram et Gilde libertatem imperpetuum eis concederet. Quibus Rex libenter concessit condicione qua sequitur, videlicet, quod quilibet eorum tria duella, scilicet super terram, subtus, et in aqua, victoriose perageret. Et postea certo die in campo qui modo vocatur Estsmithfeld contra quosque aduenientes ipsimet hastis decertarent; quodque gloriose factum est. Et ipso die Rex nominauit eam Knyttegildam.' (City Archives, Liber Dunthorn, 78 b; Letter Book C, 134 b.)

[2] Liber Dunthorn, fol. 79; Letter Book C, fol. 134b. This charter is printed in Coote's English Gild, 481.

[3] Liber Dunthorn, fol. 79; Letter Book C, ff. 134b–135. Cf. Madox, Firma Burgi, 23, 24; Monast. Anglic., vi. 156; Maitland, Lond., ii. 1011.

[4] Afterwards Portsoken Ward. See Loftie, London, 30–34.

[5] '... anno ab incarnacione domini millesimo centesimo vicesimo quinto quidem burgenses Londonie ex illa antiqua nobilium militum anglorum progenie, scilicet, Radulfus filius Algody, Wulwardus le Douersshe, Ogarus le Prude, Edwardus Upcornhill, Blackstanus, et Alwynus cognatus eius, Ailwinus et Robertus frater eius filii Leostani, Leostanus Aurifaber, et Wyzo filius eius, Hugo filius Wulgari, Algarus Fecusenne (?), Orgarus filius Deremanni, Osbertus Drinchepyn, Adelardus Hornepitesume, conuenientes in capitulo ecclesie Christi, que sita est infra muros eiusdem ciuitatis juxta portam que nuncupatur Algate, dederunt ipsi ecclesie et canonicis Deo seruientibus in ea totam terram et socam que dicebatur de Anglissh cnithegildam (*sic*) vrbis, que muro adiacet foras eandem portam et protenditur vsque in fluuium Thamesiam. Dederunt inquam suscipientes fraternitatem et participacionem beneficiorum

Thus the gild was dissolved, no trace of it appearing after this date. The various sources at our disposal throw little light upon the original functions of this brotherhood. There is no evidence to show that the London cnihten gild as such formed a part of the town government, or had any official connection with the municipal authorities[1]. We can only assert that these cnihts were probably burgesses, and constituted an influential fraternity in London.

A cnihts' gild existed in other towns besides London. The Winchester Domesday speaks of 'the cnihts' hall, where the cnihts used to drink their gild' ('chenictehalla ubi chenictes potabunt gildam suam, et eam libere tenebunt de rege Edwardo'[2]); and of a second hall held by cnihts in the reign of Edward the Confessor ('Chenictes tenebant la chenictahalla libere de rege Edwardo'[3]). Again, in a Canterbury charter (860–866), we meet with a 'cnichta gealdan[4].' Thus we find this fraternity in three of the most important cities of England.

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loci illius per manum Normanni Prioris, qui eos et predecessores suos in societatem super textum euangelii recepit. Et vt firma et inconcussa (?) staret hec eorum donacio cartam sancti Edwardi cum aliis cartis prescriptis quas inde habebant super altare optulerunt,' etc. (Liber Dunthorn, fol. 79; Letter Book C, fol. 135.) This gift to the monks of Holy Trinity was confirmed by Henry I and Stephen. See Letter Book C, fol. 135; Rymer, Foedera, i. 11, 15; Madox, Firma Burgi, 23, 24; Placita de quo War., 460, 471, 472; Monast. Angl., vi. 156–158; Stevens, Abbeys, ii. 84–89. 'Item Gaufridus Comes Essex ac constabularius principalis Turris renunciauit totum clamium suum de predicta terra, vt patet per cartam sequentem.' He gives to Holy Trinity 'molendina sua iuxta turrim et totam terram extra turrim que pertinebat ad Englisce cnihtengildam cum Smethefelda et hominibus et omnibus aliis rebus eidem pertinentibus.' (Letter Book C, fol. 135 b.)

[1] Cf. above, pp. 78-80. Loftie advances no proof to maintain his assertion that 'the governing body of London was the Knightenguild' (Loftie, London, 30).

[2] Domesday Book, iv. 531. 'Ailwardus chenicte tenuit i. domum tempore regis Edwardi,' etc. (ibid., iv. 532).

[3] Ibid., iv. 533.

[4] Kemble, Cod. Dip., ii. 83; Thorpe, Dip. Angl., 128. See also Kemble, Saxons, ii. 335. Cf. vol. ii. p. 37: 'cnihtan on Cantwareberig,' etc., *circa* 1100. Green (Conquest of England, 440) speaks of a 'cnichten-gild' at Nottingham, probably founding his statement upon Domesday (i. 280), which mentions 'equites' of Nottingham, but says nothing concerning a gild. At Wycombe there was, in the thirteenth century, a public building called 'Knaves-thorn,' which Parker thinks was identical with 'cnihten-thorn,' the court or gild-hall of the burgesses (Parker, Wycombe, 13). Knave (cf. German 'knabe,' 'knappe') and cniht originally had the same signification. In playing cards we still use knave for knight. See Skeat, Dict., *s. v.* 'knight' and 'knave'; Ettmüller, Lexicon, 395, 396; Wedgwood, Dict. 372.

To other Anglo-Saxon gilds, besides the seven already discussed, the sources give only a few scanty references. According to William of Worcester the Gild of the Calendars of Bristol was founded before the Norman Conquest[1]. This information is probably as untrustworthy as that given by Trussel regarding a Winchester gild, which, he affirms, was in existence in 856[2]. In 956 and again in 958 'the three gefer-scipas' of Canterbury occur among the witnesses of a charter[3]. This expression may refer to three gilds; and it is commonly so construed[4]. But a later copy of the charter of 958 states explicitly that these three 'gefer-scipas' were three monastic bodies: 'þet is al se hird at Cristes-cheriche and Seynt Austynes and at Seynt Gregories[5].' Domesday Book speaks of a gild-hall ('gihalla') at Dover[6]. King Edgar's Canons (959–975)[7] and the 'Leges Henrici Primi[8]' refer in a general way to the 'gild-scipe' and the 'gilde.'

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[1] Taylor, Book about Bristol, 227, 228; English Gilds, 287. Cf. above, p. 83, n. 11.

[2] Vol. ii. p. 252.

[3] Thorpe, Dip. Angl., 510; Somner, Cant., i. 178; Kemble, Cod. Dip., ii. 355.

[4] See Stubbs, Const. Hist., i. 415; Waitz, Verf., i. 465; Schmid, Gesetze, 603. Cf. Thorpe, Dip. Angl., 606–612; and above, p. 182, n. 4. After the Norman Conquest the term seems to have been used in this same sense. See Archaeol. Assoc., Journal, xl. 6. Cf. Nares, Gloss., *s. v.* 'fere'; English Gilds, 467 (fere = companion, fellow, company).

[5] Thorpe, Dip. Angl., 511.

[6] 'Willielmus filius Goisfridi [habet] iii. [mansuras], in quibus erat gihalla burgensium' (Domesday, i. 1 a). Cf. above, p. 80. I Domesday, i. 2, 3, are two passages which are commonly said to refer to a priests' gild and burgher gild of Canterbury: 'xxxii. mansuras quas tenent clerici de villa in gildam suam;' 'burgenses habebant de rege xxxiii. acras terre in gildam suam.' See Stubbs, Const. Hist., i. 415. I think that the proper translation is 'in their geld,' i.e. in their 'geldable,' or lands subject to gelds. Cf. 'quod jacuit in gildam de Dovere' (Domesday, i. 11 b); 'hae [hidae] geldebant cum civitate . . . Erant in ipsa civitate cccc. et xxxi. domus geldantes' (ibid., i. 262 b. Chester). Cf. also above, p. 59, note; and p. 178.

[7] 'And we enjoin that no priest deprive another of any of those things which appertain to him, neither in his minster, nor in his shrift-district, nor in his gildship (ne on his mynstre, ne on his scrift-scipe, ne on his gild-scipe), nor in any of the things appertaining to him.' (Thorpe, Laws, 396.) A.D. 979–1015, Athelmar 'dux' bequeathed 'ii. pund in to maessepreosta gylde; and i. pund in to diacona gylde,' at Winchester (Liber de Hyda, 254). Perhaps 'gild-scipe' in Edgar's Canons and in the Woodbury gild (Thorpe, Dip. Angl., 610) may simply mean an ecclesiastical district, 'gild' being used in the sense of worship, as in Withrad's laws. Cf. above, p. 177, n. 4.

[8] 'In omni potatione, dationi, vel emptioni, vel gilde, vel ad quidlibet in hunc modum praeparata, primo pax Dei et Domini inter eos qui convenerint' (Schmid, Gesetze, 478; Thorpe, Laws, 256). Cf. the passage in Walter Map, De Nugis, 79: 'quales Anglici in singulis singulas habebant diocesibus

It is evident that gilds were a well-known institution among the Anglo-Saxons. But there is a strong tendency to exaggerate their number. For example, the 'ingan burgware' of Canterbury, which Kemble calls 'a burghers' club or gild[1],' means simply the burgesses within the town, being identical with the 'innan burh-wara' who in some Canterbury documents are contrasted with the 'utan burh-wara' or 'out-burgesses[2]. The association which Thorpe in his 'Diplomatarium' (p. 615)[3] places under the rubric 'gilds,' was a union of seven monasteries existing in the reign of William the Conqueror. Each of them was enjoined to have masses sung weekly for the welfare of all, as though all seven bodies had one mind and one heart ('quasi cor unum et anima una'). Such federations were quite common on the Continent[4]. The 'gebeor-scipe' or 'gebur-scipe,' which Thorpe feels inclined to make 'a club resembling a gild[5],' is, in most cases, simply equivalent to 'compotatio' or 'convivium[6],' and was no more a real gild than the 'convivia' of Tacitus[7] or the wakes of later times[8]. It is well known that the Anglo-Saxons were very convivial: 'conviviis et potationibus non praeliis intendunt[9]'; but their convivial meetings were not confined to gilds. Again, the 'deofol-gild' (devil-worship) of Ine's laws was not, as some assert, a society or fraternity[10]. Many writers go so far as to include the 'frith-borh' and hundred in the category of gilds[11]. We are even in-

bibitorias, *ghild-hus* Anglice dictas.' Anselm wrote from Bec as follows concerning the doings of an officer of a monastery in England: 'in multis inordinate se agit et maxime in bibendo [ita] ut in Gildis cum ebriosis bibit;' 'ne . . . amplius in Gilda aut in conventu eorum qui ad inebriandum solum conveniunt bibere audeat.' (Anselmus Cant., Epist., lib. ii. Epist. 7.)

[1] Kemble, Saxons, ii. 335; Cod. Dip., ii. 83.

[2] Thorpe, Dip. Angl., 510, 511; Somner, Cant., i. 178; Kemble, Cod. Dip., ii. 355.

[3] Also printed in Hickes, Diss. Epist., 19, 20.

[4] Wilda, Gildenw., 31; Rettberg, Kirchengesch., ii. 788, 789. See also Rock, Church of our Fathers, ii. 379.

[5] Thorpe, Laws, Gloss, *s. v.*

[6] Schmid, Gesetze, 24. Cf. also Hloth. and Eadr., c. 12, 13, 14; Athelr., iii. c. 1; Hen. I, c. 87 (Schmid, 12, 212, 481, 482; Thorpe, Laws, 14, 124, 259).

[7] See Waitz, Verf., i. 90.

[8] For these wakes, see Thorpe, Laws, 257; Spelman, Gloss, *s. v.*; Eng. Gilds, p. xcii.

[9] Stubbs, Const. Hist., i. 216. See also Turner, Anglo-Saxons, iii. 58, 59; Wright, Domestic Manners, 77; Thorpe, Laws, Index to Monum. Eccles., *s. v.* 'drunkenness.'

[10] Lappenberg, Engl. i. 609; Marquardsen, Haft, 43, 44. See above, p. 177, n. 4.

[11] Picton, Self-gov., 682; Pike, Crime, i. 58; Varenberg, Relations Dipl., 34–35; Wilkins, Leges, 395; Spelman, Gloss., *s. v.* 'geldum.' Kemble (Saxons, i. 238–245, ii. 309–313, 332) identifies the gilds with the 'frith-borh,' and yet in one place he speaks of the former as private, voluntary associations, and in

formed that the name of the historian Gildas was derived from a gild[1]. We must remember that a transient convivial gathering did not constitute a gild, that this word did not necessarily mean a fraternity, and that the gild was only one of various manifestations of the principle of association in the middle ages.

Not merely the number but also the influence of Anglo-Saxon gilds has been greatly exaggerated. There is no evidence to support the assertion that the gild was a primary factor in the origin and early development of the English municipality—that it was the basis or nucleus of the borough constitution[2]. The burden of proof lies with those who advance this theory, and not with those who reject it. Brentano cites only one example in support of his generalisation that 'a patrician aristocracy' in the form of a supreme gild ('summum convivium') became the governing body, or constituted the town corporation, in Anglo-Saxon boroughs. This one example is the thanes' gild of Canterbury[3], concerning which the sources give us no information whatsoever. Hence Brentano's evidence is purely conjectural. His commonly accepted story of a great network of frith gilds covering England, battling with lordly oppressors, founding town constitutions, etc., is merely a phantasm of the imagination—a dramatic version of the few prosaic facts presented in the sources of this period.

In conclusion, we may also remark that our survey of Anglo-Saxon gilds has revealed no trace of a Gild Merchant.

another place makes the 'frith-borh' a public, compulsory union (i. 239, ii. 309).

[1] Moke, Mœurs, i. 190.
[2] Above, pp. 77–85, 170.
[3] Brentano, Engl. Gilds, p. xcviii.

APPENDIX C.

The English Hanse[1].

Although the word 'hansa' is clearly un-English, the name of the Hanseatic League is often supposed to have been derived from England[2]; but we search in vain in the works of continental and British writers for a clear explanation of the term 'hanse,' as used in English towns during the middle ages[3]. Professor Pauli's essay on the 'Auftreten und Bedeutung des Wortes Hansa in England,' consists merely of a few vague conjectures concerning this institution[4]. English writers generally ignore its existence; those who incidentally touch upon the subject either dismiss it with a few vague phrases, or follow the example of Merewether and Stephens[5] in confounding the local hanses of Englishmen with the Teutonic Hanse ('hansa Alemanniae') of Germans trading in England. The elucidation of the subject is difficult, owing partly to the meagreness of the widely scattered sources, partly to a certain ambiguity with which the term was employed.

The word rarely occurs except in the town charters, and then almost invariably in connection with the gild merchant. Though the gild is often granted without any mention of the hanse, the latter commonly appears in town charters in close proximity to the former: 'quod [burgenses] habeant gildam mercatoriam cum hansa,' or 'gildam mercatoriam et hansam,' or 'gildam mercatoriam cum hansa et aliis consuetudinibus et libertatibus ad gildam illam pertinentibus.' It also frequently appears in the clause relating to

[1] The substance of this Appendix was printed in the Revue Historique, vol. 33, pp. 296–303.

[2] Sartorius, Gesch. der Hanse, i. 73; von Maurer, Städteverf., ii. 254; Stubbs, Const. Hist., i. 411, 422.

[3] The O-English word is hós found in Béowulf, 924, but apparently not used in prose.

[4] Hans. Geschichtsblätter, 1872, pp. 15–20. It is strange that such an eminent authority on English History could find only four instances of the use of the word 'hanse' in connection with English towns.

[5] Hist. of Boroughs, 1049. Cf. also Blount, Dict., *s. v.* 'hanse.'

the enfranchisement of the villein: 'si nativus . . . fuerit in gilda et hansa,' etc.[1]

The following is a list of most of the charters that refer to the hanse:—

Name.	Date.	Authorities.
Aberystwyth	1277	Above, p. 16.
Athboy	1407	Above, p. 18.
Bala	1324	Above, p. 16.
Beaumaris	1296	Vol. ii. p. 16.
Berwick	1302	Cal. Doc. Scotl., ii. 334[2].
Beverley	1119–35	Vol. ii. pp. 21–22[3].
Bridgnorth	1227	Eyton, Shrop., i. 303.
Builth	1278	Vol. ii. pp. 355, 356.
Caerwys	1290	Vol. ii. p. 357.
Cardigan	1388	Merew. and Stephens, 778.
Carnarvon	1284	Above, p. 16.
Conway	1284	Above, p. 16.
Criccieth	1284	Above, p. 17.
Denbigh	1379	Williams, Denbigh, 119.
Drogheda	1229	Vol. ii. p. 58.
Dundalk	1379	Munic. Corp. Com., Irel., 891.
Dunwich	1200	Rot. Chart., 51, 211.
Exeter	Hen. VIII	Vol. ii. p. 86.
Flint	1284	Taylor, Flint, 31.
Gloucester	1227	Vol. ii. p. 374.
Grimsby	1324	Swinden, Yarm., 28.
Harlech	1284	Above, p. 17.
Hedon	1348	Vol. ii. p. 108.
Hereford	1215	Rot. Chart., 212; vol. ii. p. 110.
Hope	1351	Vol. ii. pp. 375, 376.
Ipswich	1200	Vol. ii. p. 115.
Lampeter	1332	Above, p. 17.
Liverpool	1229	Harland, Mamec., 198[4].
Ludlow	1461	Charters of Ludlow, 11, 12.
Montgomery	1227	Above, p. 17.
Newborough	1303	Above, p. 17.
Newcastle	1201	Rot. Chart., 86[5].
Newton	1363	Vol. ii. p. 386.
Oswestry	1398	Vol. ii. p. 191.
Overton	1291–2	Above, p. 17.
Preston	[Edw. III]	Vol. ii. p. 194[6].

[1] See above, pp. 8, 59.
[2] See also vol. ii. p. 19.
[3] Cf. below, p. 196.
[4] See also Picton, Memor., i. 13.
[5] See also Brand, Newc., ii. 131, 132.
[6] Harland, Mamec., 182, thinks that

Name.	Date.	Authorities.
Pwllheli	1355	Above, p. 17.
Rochester	1227	Vol. ii. p. 387.
Rhuddlan	1278	Above, p. 18.
Scarborough	1253	Vol. ii. p. 388.
Shrewsbury	1227	Vol. ii. pp. 210, 211.
Welshpool	[Edw. I]	Vol. ii. p. 389.
Wigan	1246	Sinclair, Wigan, i. 41.
Worcester	1264	Vol. ii. p. 272.
York	1200	Vol. ii. p. 279[1].

These passages in the town charters leave a strong impression on the mind that the hanse was in some way connected with the gild merchant, but in what way they do not reveal. For more light we must turn to other records.

The term 'hanse' was most commonly used to denote a mercantile tribute or exaction, either as a fee payable upon entering the gild merchant, or as a toll imposed upon non-gildsmen before they were allowed to trade in the town. Thus at Ipswich, in the second year of the reign of King John, the brethren, having established their gild, were directed to contribute their hanse to the fraternity ('et ad hansam suam eidem Gilde dandam[2]'). New members admitted to the gild at Ipswich generally made a payment to the hanse of the gild ('ad hansam gilde ville[3]'). In the principal towns of Wales (Beaumaris, Conway, Bala, Newborough, Carnarvon, Harlech, and Criccieth) it was necessary before entering the gild to pay the hanse, which in the Record of Carnarvon is expressly defined as a 'proficuum' or 'custuma[4].' In a document relating to Conway we find a similar definition:—'Hansa, hoc est primum custumu[m] vocatum hansa[5].' At Andover some of the members of the gild merchant had the 'gildam hansariam' in distinction from the 'gildam liberam'; in other words, their gildship was subject to a certain payment called 'hans[6].' The burgesses of Bury St. Edmund's, who had revolted against the authority of the Abbot, and had claimed among other liberties the right of establishing

the charter in which the word 'hanse' occurs, was granted to the burgesses of Preston about A.D. 1100.

[1] See also Drake, Ebor., 228.—For the use of the word 'hanse' in other records besides town charters (at Andover, Bury St. Edmund's, Ipswich, Leicester, Oxford, and various boroughs of Wales and Scotland), see below, pp. 194-197.

[2] Vol. ii. p. 121.

[3] Vol. ii. pp. 123, 124, 377.

[4] Vol. ii. p. 16, 48.

[5] Williams, Aberconwy, 182.

[6] Above, p. 31. 'Gildam quam tenet, pro qua interrogatus fuit soluere suum hans' (vol. ii. p. 292).

a gild merchant, imposed a tax called 'hansing silver' upon all who wished to remain among them[1].

In the Leicester Gild Rolls a newly admitted brother was often said to be 'quietus de introitu et de hansis.' In one case we find 'quietus de introitu, et de ansis per totam Angliam[2].' Here hanses can only mean tolls or mercantile exactions. The term is used in a cognate sense in a charter granted by King John to the burgesses of Newcastle-upon-Tyne: —'quietantiam de theloneo et passagio et pontagio et de ansa et de omnibus aliis consuetudinibus per totam terram nostram[3].' A charter of Edward II allows the burgesses of Grimsby to be quit, throughout the realm, of tolls, pontage, lastage, 'hansagio,' etc.[4]. At Oxford a similar prestation bore the name of 'hanseria':—'uno redditu qui vocatur basket stallagio, piscaria, coquinaria, et hanseria, qui valent per annum xl. li[5].' In the same category of hanse exactions, though bearing a different name, we may class the 'gildwite,' extorted by the gild of Lincoln from merchants passing near that city[6], and the 'customa mercatorum,' called 'gild-silver,' at Henley[7].

When, then, a charter granted to a town 'gilda mercatoria cum hansa,' or 'cum hansis,' it doubtless meant 'the gild merchant with the right to exact money requisitions or prestations from the brethren as well as from non-gildsmen trading in the town.' In the sixteenth and seventeenth centuries the Merchant Adventurers of England often used the word 'hanse' in one of the senses mentioned above, *i.e.* that of entrance-fee[8].

[1] Vol. ii. p. 32.

[2] Vol. ii. pp. 137, 138.

[3] Rot. Chart., 86; Brand, Newc., ii. 131, 132.

[4] Oliver, Grimsby, 79. In 17 Edward II the king directed the bailiffs of Yarmouth not to impose toll, hanse, etc. upon the men of Grimsby, contrary to the latter's charter, but to allow them to be quit of the same: 'de hujusmodi theolonio, muragio, panagio [i. e. pauagio], pontagio, stallagio, hansagio, anchoragio, terragio, kayagio, passagio et sedagio, vobis ibidem de eisdem bonis et mercimoniis prestand[is] quietos esse permittatis.' (Swinden, Yarm., 28.)

[5] Madox, Firma Burgi, 94 (22 Edw. I). Turner (Oxford Records, 23) thinks that 'hanasterii,' the term applied to freemen or gildsmen at Oxford, was derived from 'hanse.' See vol. ii. p. 194.

[6] Vol. ii. p. 147. Cf. above, p. 50, n. 1.

[7] Vol. ii. p. 109.

[8] 'It is ordered and enacted that for the futur for all Hanses, Fines and Broakes att Admissions and all Broakes condemned in Court for any kind of Transgressions against the orders of the Fellowshipp, and all other moneys whatsoever for which there are securitys put in to satisfye the Treasurer, the same shall be cleared by each respective Treasurer in whose time the said Debts did arise . . . .' (Jan. 165$\frac{8}{9}$.—Addit. MS., Mus. Brit., 18913, fol. 19.)—'Euerie persone admitted into the Freedome of the Fellowshippe of Merchant Adventurers of the Realm of

Hanse was also sometimes employed in the middle ages as a synonym for 'gilda mercatoria[1].' Thurstan, Archbishop of York, granted to the burgesses of Beverley a 'hans-hus,' which term is superseded in the confirmation charters of Archbishop William and King Henry I by 'gilda mercatoria[2].' In the sixteenth century the gild-hall of Beverley was called the hanse-house[3]. At Ipswich 'gilda' and 'hansa' or 'hansa de gilda' were sometimes used synonymously[4]. In Liber Winton a gild-hall of Winchester bears the name 'hantachensele,' which looks like a corruption of 'hansesele' (German, 'hansa-saal'): 'hantachensele ubi probi homines Wintonie potabant Gildam suam[5].' In charters conferred by English kings upon the Teutonic Hanse, gild and hanse are used synonymously[6]. The gild, or company, of Merchant Adventurers of England was also in later days called a 'haunce[7].'

England shall pay at suche his admission yf he come in one the old hanse, as yt ys termed, 6*s.* 8*d.* sterlinge, And yf he come in one the new hanse, tenn markes sterlinge, according to the Rate of the Exchaunge.' (*Circa* 1600.—Ibid. f. 23.) See also Schanz, Englische Handelspolitik, ii. 557, 558, 561; Anderson, Origin of Commerce, i. 233; Malynes, Center of Circle of Commerce, 89.

[1] This is the view of Stubbs, Constit. History, i. 411, 416; Dobson and Harland, Preston Guild, 5; Pauli, Auftreten und Bedeutung des Wortes Hansa, 17; Lappenberg, Engl. i. 611; Herbert, Liv. Comp., i. 11; Thompson, Essay on Municipal History, 99; Owen and Blakeway, Shrewsbury, i. 100. But they do not give any example of the synonymous use of the two terms.

[2] Vol. ii. pp. 21, 22. 'Hans-hus' is here the equivalent of 'hanse,' just as 'domus' or gild-hall frequently stands for gild. See English Gilds, 60, 167, *et pass.*; Richards, Lynn, 457, 458; and vol. ii. pp. 5, 12, 109, 154, 162, 203, 207, 208, 271, 272.

[3] See Poulson, Beverlac, 314, 330, 332. 'The accompte of John Truslove, late maior of the towen of Beverley within the Countye of Yorke, of all the rents, revenewes, yssues, profittyes, and comoidytyes perteyninge to the hanse house and comynaltie of the same towne,' etc. (Ibid., 330, 27 Eliz.) Poulson regards 'hanse-house' thus used as a synonym for gild-hall. (Ibid., 332.)

[4] Rep. MSS. Com., 1883, pp. 240, 241; cf. vol. ii. pp. 123, 124, 377.

[5] Woodward, Hampsh., i. 266. In the edition of the Liber Winton, published by the Record Commission (Domesday, iv. 556), this word has been incorrectly transcribed from the original. I have given the passage as it stands in the manuscript owned by the Society of Antiquaries of London.—In the thirteenth century the gild-hall of Leicester was called 'gild salle' (Notes and Queries, First Series, v. 532). For 'thol-sel,' see above, p. 82, n. 1. There was also a merchants' hall or 'Sele' in Winchester called 'chepmane-sela' (Pipe Rolls, 3 Hen. II, 108; 5 Hen. II, 48; 6 Hen. II, 49; and other early Pipe Rolls; Archaeol. Journal, vii. 381).

[6] Liber Albus, 535, 540; Sartorius, Hanse, i. 42; Campbell, Materials for Reign of Henry VII, i. 476.

[7] Rep. MSS. Com., 1874, p. 203 (A.D. 1552).—Some writers think that 'hanse' in the town charters of Great Britain refers to a union of burgesses for the purpose of carrying on foreign commerce. See Baines, Liverpool, 93; Drake, Eboracum, 228. But there is no evidence in the sources to support this hypothesis. Moreover, many of the

In some charters granted to Irish towns, the words 'gildam mercatoriam cum hansa' are replaced by the following: 'Liceat burgensibus meis gildam mercatoriam et alias gildas habere et suos scotenos, cum omni libertate ad ipsos spectante, sicut consuetudo est aliarum bonarum villarum[1].' It is quite probable that these words 'suos scotenos' confer the same privilege as 'hansa' in the English charters.

In Scotland the word 'hanse' was not as prevalent as in England. It rarely occurs in Scotch town charters. There is, however, one very noteworthy instance of its use. King William the Lion (1165–1214) granted to his burgesses of Aberdeen and all the burgesses of Moray and those north of the Munth (probably Kintore, Banff, Cullen, Elgin, Forres, Nairn, and Inverness) their free hanse:— 'Willelmus dei gracia Rex Scottorum omnibus probis hominibus tocius terre sue salutem. Sciant presentes et futuri me concessisse et hac carta mea confirmasse burgensibus meis de Aberdoen et omnibus burgensibus de Moravia et omnibus burgensibus meis ex aquilonali parti de Munth manentibus liberum ansum suum tenendum ubi voluerint et quando voluerint, ita libere et quiete, plenarie et honorifice, sicut antecessores eorum tempore Regis David aui mei ansum suum liberius et honorificentius habuerunt. Quare prohibeo firmiter ne quis eos inde vexet aut disturbet, super meam plenariam forisfacturam. Testibus . . . apud Perth[2].' Some eminent Scotch writers have regarded this hanse as a federation of towns[3]. If this were true, the passage would be very valuable as furnishing us with the earliest instance of the use of the term in this sense; the 'ansum' north of the Munth would, in fact, be the harbinger of the celebrated Hanseatic League. But it is more probably intended, either as a general grant of the Gild Merchant[4], or as a grant of the right to impose the hanse tribute upon merchants.

boroughs that received a grant to the gild and hanse were insignificant inland towns, the burgesses of which had little to do with foreign commerce. Drake calls the 'hansas' mentioned in the charter of York (vol. ii. p. 279) 'foreign colonies' of the gild (Eboracum, 228). It is far more probable that 'hansas' is to be construed with the words 'lestagia' and 'quieta,' the sense of the passage being simply that the burgesses are to be quit of mercantile imposts in England and Normandy. The plural 'hansas' also occurs in charters of Hedon and Scarborough (vol. ii. pp. 108, 388).

[1] Vol. ii. p. 134; and above, p. 59, note.

[2] Acta Parl. Scotl., i. [77] 87.

[3] Munic. Corp. Com., Scotl., Rep., p. 11; Burton, Scotland (2nd edition), ii. 89; Irving, Burghs in Scotland, Glasgow Archaeol. Society, Trans., i. 342; Innes, Anc. Laws and Customs, p. xxxix.

[4] Compare the following passage in

On the Continent, as is well known, the word hanse was used in the various senses noted above, viz. as an entrance-fee of a trading gild[1], as a mercantile exaction[2], as synonymous with merchant or craft gild[3], and, above all, as a society of merchants trading in foreign parts[4].

the 'Assise Regis Willelmi I':—'Item statuit quod mercatores regni habeant gildam suam mercatoriam et ita gaudeant in pace, cum libertate emendi et vendendi ubique infra limites libertatum burgorum.' (Acta Parl. Scot., i. 383.) The Gild Merchant was sometimes granted to the English towns with a clause similar to 'tenendum ubi voluerint et quando voluerint.' See above, p. 58; Archaeol. Journal, xxix. 352.

[1] Du Cange, Gloss., *s. v.* 'apprenticiatus,' and 'hansa.'

[2] Höhlbaum, Urkundenbuch, iii. 408, 553; Du Cange, Gloss., *s. v.* 'hansa'; Giry, St. Omer, 372, and Documents, 47; Wauters, Lib. Com., 586, and Preuves, 234, 235; Von Maurer, Städteverf., i. 194, ii. 279; Sartorius, Hanse, i. 75, ii. 9; Warnkönig, Fland., i. 329 and No. civ.; Grimm. Wörterb, *s. v.* 'hanse'; Kemble, Saxons, ii. 529.

[3] 'Mercatorum societati [of Brackel] que vulgariter hanse dicitur.' (A. D. 1309. Gengler, Codex, 267; cf. ibid., 964.) There was also at Brackel a 'hanza pistorum' in 1315 (ibid., 267). The 'handicraftsmen's hanse' of Driburg is spoken of in 1345: 'de der hantwerken hanze winnet,' etc. (ibid., 904). See also Höhlbaum, Urkundenb., iii. 553; De Lettenhove, Flandre, i. 272; Van Mieris, Groot Charterboek, i. 356; Nitzsch, Niederd. Genoss., 22; Wauters, Lib. Com., 586; Von Maurer, Städteverf., ii. 254, 358; Fortuyn, Specimen, 18; Grimm, Wörterb., *s. v.* 'hanse.' —For the Hanse of Paris, see Warnkönig, Franz. Gesch., i. 317; Fortuyn, 107; Boileau, Livre des Métiers, 469. For the statutes of the hanse of St. Omer, see Giry, St. Omer, 413, and D'Hermansart, Anc. Com. For the peculiar use of the term hanse at Göttingen, see above, p. 31, n. 4.

[4] For the Hanseatic League and various local hanses, see Höhlbaum, Urkundenb., iii. 469, 553; Von Maurer, Städteverf., ii. 254, 276; Koppmann, Hanserecesse, i., Introd.; Sartorius, Hanse, i. pp. xviii., 73–76; Schäfer, Hansestädte, 251, 252; Du Cange, Gloss., *s. v.* 'hansa'; Zimmern, Hansa Towns; Denicke, Von der deutschen Hansa; Mallet, Ligue Hans.; Lappenberg, Stahlhof, App. 3, *et pass.*; Worms, Ligue Hans.; Schäfer, Die Hanse. The German Hanseatic League is not to be confused with the 'Hanse de Londres,' probably so called because London was its most important foreign emporium. It was also known as 'les dix-sept villes.' This Hanse of London flourished in the thirteenth and fourteenth centuries. A record of 1426 indicates that it was then in a state of dissolution. Bruges and Ypres were at the head of the league, which originally consisted of seventeen towns of Flanders, and North France, the number being probably gradually increased to at least fifty-six. No persons belonging to these towns could carry on trade with England unless they were members of the Hanse. See Bourquelot, Foires de Champagne, 134–139; Warnkönig, Fland., i. 329–331, App. 81–86; Varenbergh, Relations, 145–155; Giry, St. Omer, 282, 283; Ashley, Econ. Hist., 104, 106, 109, and Artevelde, 17–20; Lappenberg, Stahlhof, 6; Thierry, Docum., i. 177.

APPENDIX D.

The Scotch Gild Merchant.

§ 1. *Inception and Distribution.*

Though Scotland seems to have borrowed some of her early burghal laws from England[1], the general development of her municipal history in the middle ages resembles that of the Continent more closely than that of England. This was probably due to the weakness of royal authority in Scotland[2], and in part, perhaps, to the intimate relations existing between that country and the Continent. After the thirteenth century Scottish burghs sought municipal precedents in France and Flanders rather than in England[3].

[1] Below, p. 257.

[2] The central government was much stronger in England than in Scotland or on the Continent. This greatly influenced the growth of English municipal institutions. Cf. above, pp. 106, 109.

[3] In 1593 the Gild Merchant of Scotch burghs was regulated 'according to the lovable forme of jugement vsit in all the guid townis of France and Flanderis, quair burses ar erected and constitute, and speciallie in Paris, Rowen, Burdeaulx, Rochell.' (Acta Parl. Scot., iv. 30.) For the close political relations between Scotland and France in the middle ages, see Moncrieff, Memoirs of ancient alliances between French and Scots; and Misc. Scotica, vol. iv. Active commerce was also carried on by the Scots in France and the Low Countries. (Rec. of Conv. of Royal Burghs, *pass.*; Höhlbaum, Urkundenbuch, iii. 58, 62, 64, 194, 243, 352, 407, 523; Libell of Engl. Policye, 33, 34; Warnkönig, Fland., ii. 146; Giry, St. Omer, 283; De Fréville, Commerce de Rouen, i. 102, 255.) Many Flemings settled in Scotland and formed a powerful element in Scotch burghal life. (Above, p. 109; Rot. Scacc., i. p. lxxxi, lxxxii; Crawfurd, Trades' House, 23; Scottish Review, xi. 11; Acta Parl. Scot., xii. 543; Chalmers, Caled., i. 600, 735, 782.) A charter granted by Earl David (1171–1199) was addressed to 'Francis et Anglis et Flamingis et Scotis.' (Rot. Scacc., i. p. lxxxii; Hist. MSS. Com. 1870, p. 121.) In a royal charter of 1357 there is a reference to Flemish law existing in Scotland, 'lege Flaminga, que dicitur Fleming lauche.' (Ibid.; cf. Acta Parl. Scot., i. 37 [31].) These foreigners must have aided in making the Scots familiar with continental civic institutions. The presence of such words as 'maisterstick', 'sigillum ad causas', 'Maison Dieu', etc. testify to considerable continental influence. See Michel, Inquiry into Scottish Lang., vii., viii., 162, *et pass.*; Bain, Ab. Guilds, 107, 199, 204; Groome, Gaz., iv. 331; below, p. 202, n. 2. See also Rec. of Conv., i. 76; Mackenzie, Roman Law, 41.

As it is commonly asserted that the development of the burghal polity was the same in Scotland as in England [1], I will indicate some of the points of divergence between the two countries, without attempting to treat the subject exhaustively. Burghs in Scotland comprised three well-defined classes, namely, royal burghs, burghs of regality, and burghs of barony [2]—a classification unknown to England. In Scotland there was considerable national legislation concerning burghs in general, and hence more uniformity of constitution than in England. For example, the statute of 1469, c. 5, made the burgh councils of Scotland self-elective. In England each town council had a history of its own as regards the development of the principle of self-election. It is also to be remembered in this connection that there was no body of general laws in England like the medieval 'Leges Burgorum [3].' Again, one of the most striking features of Scottish municipalities was their strong spirit of federation. The Convention of Royal Burghs, which was an outgrowth of the more ancient Parliament or Court of the Four Burghs, continued to wield great influence down to modern times [4]. In England there

[1] For example, Merewether and Stephens, i. p. xvii.

[2] The chief characteristics of a royal burgh were that it was held directly of the crown, it had the election of its own officers, exercised the right to export and import merchandise, and after 1326 was represented in Parliament. Burghs of regality and barony were held of mesne lords, the former having a more extensive jurisdiction than the latter. Both were open to the interference of their lords in the management of burghal affairs; and the burgage tenure in both was inferior to that by which burgesses in royal burghs held their tenements. (Munic. Corp. Com., Scotl., 1835, Rep., 16, 20, 21, 75; 1836, pp. 3, 4; Skene, Royall-Burghs, 17, 18; Innes, Anc. Laws, xxxviii., xlii.; Acta Parl. Scot., ix. 152, App. 146.) The royal burghs paid certain public taxes from which other burghs were exempt. By the Acts of Parliament 1672, c. 5, and 1693, c. 51, the right to engage freely in foreign trade was extended to such burghs of barony and regality as agreed to bear the burdens of taxation with the royal burghs. (Misc., Preface, xxv–lxi, lxxxvii; Rec. of Conv., iv. p. v.)

[3] These laws are commonly ascribed to the reign of David I. They are printed in Acta Parl. Scot., i. 327–356 [17–44], and in Innes, Anc. Laws, 4–58. For the diversity in the constitution of burgh councils, notwithstanding the Act of 1469, see Misc., lxvii. et seq.

[4] The Court of Four Burghs originally consisted of Berwick, Stirling, Edinburgh, and Roxburgh. In 1368 Lanark and Linlithgow were substituted for Berwick and Roxburgh, which had fallen into the hands of the English (Acta Parl. Scot., i. 507). This Court or Parliament of Four Burghs exercised a general supervision over the burghs of Scotland, making laws for them, and, above all, acting as a high court of appeal in difficult questions relating to burghal usages and privileges. It is surmised that the 'Leges Burgorum' were framed by this body in the reign of David I. The Convention of Royal Burghs seems to have emerged from the Court or Parliament of Four Burghs in the fifteenth century, though

has always been a conspicuous absence of federative unions of towns[1]. Moreover, the general aspect of the burghal constitution differed in the two countries. The hundred organization, pie-powder courts, and municipal incorporation were common in English boroughs, but almost unknown in those of Scotland[2]. Many of the latter, like the Roman 'civitas,' enjoyed privileges in adjacent territory extending far beyond the burgh walls[3]; which was very rarely the case this side of the Tweed. Roman law in general had more influence in Scotland than in England[4]. The names of Scotch burghal institutions were strange to the townsmen of England. There was a provost instead of a mayor, there were gildries, corpor-

the latter name was not superseded by the former until the sixteenth century. A document of 1405 indicates that the Convention was then just beginning to emerge from the older Court or Parliament. In that year it was enacted that two or three burgesses from each of the King's burghs south of the Spey should assemble annually 'ad tractandum, ordinandum et determinandum super his omnibus que ad vtilitatem reipublice burgorum universorum dicti domini nostri Regis et ad eorum libertates et Curiam dignoscuntur pertinere.' (Acta Parl. Scot., i. [339], 703.) In 1454 it was enacted that the Court of Four Burghs should assemble annually at Edinburgh to determine appeals from the burghal courts of the Kingdom, to regulate the standards of weights and measures, and to determine other matters relating to burghs. (Ibid., xii. 23.) In 1578 a statute enacts that the Convention was to meet four times every year, each borough sending one commissioner, except Edinburgh, which could send two. (Ibid., iii. 102.) The Convention acted as a high court of appeal or arbitration, deciding disputes between different burghs or between the burgesses and their magistrates; it also frequently framed or altered the 'setts' or written constitutions of burghs; it made general regulations relating to commerce, foreign and domestic; it sent commissioners to, and negotiated treaties with, foreign cities and states; and apportioned among the burghs their respective shares of the national taxes. It still exists, its meetings being held once a year at Edinburgh. It now merely makes suggestions regarding matters of municipal interest, with a view to influence public opinion and parliamentary action. There is no good account of its history, though it is worthy of careful investigation. For many important documents relating to the subject, see Records of Conv. of Royal Burghs. See also below, pp. 215, 258; Munic. Corp. Com., Scotl. 1835, Rep., 15, 16, 19; 1836, App. 10–21; Acta Parl. Scot., xii. 267, 367; Innes, Scotl., 170; Sets, *pass.*; Documents, 75–77; Chalmers, Caledonia, i. 777; McDouall, Laws, ii. 579; Houard, Traités, ii. 461–463; Register of Privy Counc., vi. 32; Black, Royal Burrows, Pref., 37–159; Mackay, Conv. of Royal Burghs; Burton, Scot., ii. 90, 91; Misc. Records Soc., Pref.

[1] Above, p. 106.

[2] Robertson, Scotl. under Early Kings, i. 303; Irving, Dumbartonsh., 5; Colston, Guildry of Ed., 62.

[3] Below, pp. 206, 214; Robertson, Scotl. under Early Kings, i. 304; Innes, Anc. Laws, p. xxxvii; Acta Parl. Scot., i. 86, 88 [76, 78]; Munic. Corp. Com., Scotl., 1835, Rep. 10, 11, 15; 1836, pp. 3, 4, 299; Irving, Burghs, 338; Hamilton of Wishaw, 256.

[4] Acta Parl. Scot., xii. 330; Mackenzie, Roman Law, 40, 41.

ations (i. e. crafts), conveneries of crafts[1], seals of cause[2] by which the crafts were incorporated, etc. We shall soon see that the general development of the Gild Merchant and crafts forms a striking point of divergence in the municipal history of the two countries.

There are two periods in the growth of the Scotch Gild Merchant or Gildry. The first comprehends the twelfth, thirteenth, and fourteenth centuries, during which its history did not differ greatly from that of the English Gild Merchant. The second period extends from the fifteenth to the nineteenth century, and is marked by a bitter conflict between the Gildry and the crafts.

The Gild Merchant or Gildry of Scotch towns first comes to view in the reign of David I (1124–1153)[3]. It must have been a common feature of the royal burghs of Scotland in the twelfth and thirteenth centuries[4]. In the sixteenth and seventeenth centuries

[1] 'In many burghs there exists an aggregate body composed of representatives of the different [craft] corporations, called the Convenery, or Convener's Court. The functions of this body are to consult on all matters in which the general interests of the crafts are concerned; to protect their rights and privileges, as by assisting corporations in prosecuting unfreemen; to determine all differences that may arise among them; and, in some cases, to make bye-laws relative to the several corporations. . . . There are conveneries in Edinburgh, Glasgow (there called the Trades' House), Aberdeen, Dundee, Banff, Perth, Inverness, Dumfries, St. Andrew's, Leith, Lanark, and several other burghs. There were slight differences in the constitution of the convenery in different burghs; but ordinarily it consisted of the deacons of the trades, who elected out of their number a chairman, who was formerly called the deacon warner, but now the deacon convener; and he, in all burghs, is accounted the head of the tradesmen.' (Munic. Corp. Com., Scotl., 1835, Rep., p. 84.) See also ibid., 1835, pp. 159, 181, 425; 1836, pp. 68, 313; Irving, Burghs, 347; McDouall, Laws, ii. 578; Acta Parl. Scot., ix. 509; Sketch of Ed. Const., pp. xxxvi, 24; Crawfurd, Trades' House, 125–132; Constitution of Burghs, 193; Rec. of Conv., iii. 298, iv. 377; and below, pp 220–223. This office still exists in Glasgow and Edinburgh. (Goudy and Smith, Local Gov., 28.)

[2] A 'sigillum ad causas' was a charter granted by the burghal authorities to any body of craftsmen, specifying their rights and privileges; above all, excluding non-members from using their craft, giving the members the right to make bye-laws, to elect their own officers, etc. But such a grant did not release the craft from the control of the civic magistrates. (Munic. Corp. Com., Scotl., 1835, Rep., 78–80.) At St. Omer a seal of cause was used by the civic magistrates for minor transactions. (Giry, St. Omer, 230, 231.) A seal of cause was also used at Campvere, with which city Scottish burghs had intimate commercial relations. (Rec. of Conv., ii. 362.) I have never met with any mention of this seal in the local records of England.

[3] See the extract from the Leges Burgorum given below, p. 213, n. 2.

[4] The wording of many medieval documents shows that the Gild Merchant was a common feature of Scotch burghs. See below, p. 204, notes, and p. 205, n. 1; also the extracts from the public records, below, pp. 207–209.

few royal burghs were without a Gildry[1]. Subjoined is a list of the burghs in connection with which I have met with references to this institution; the asterisk indicates that the Gildry or its chief officer still survives[2].

Name.	Date.	Authorities.
*Aberdeen	1222	Below, p. 219, n. 3.
*Annan	1538	Misc., 228; Groome, Gaz., i. 51; Munic. Corp. Com., Scotl., 1835, p. 61.
Anstruther-Easter	1583	Constitution of Burghs, 104.
Anstruther-Wester	1587	Ibid., 85.
*Arbroath	1599	Ibid., 89, 194; Hay, Arbroath, 306–313; Sets, 52; Misc., 279, 293[3].
*Ayr	1428	Dickson, Gild Court of Ayr, 225; Acta Parl. Scot., i. 180, 181; Sets, 71; Charters of Ayr, 195.
*Banff	1592	Constitution, 90, 198; Sets, 55; Munic. Corp. Com., Scotl., 1835, p. 110; Imlach, Banff, 77.
Berwick	[1249]	Below, p. 211, n. 1.
*Brechin	1601	Black, Brechin, 46–48; Reg. Privy Council, vi. 391; Constitution, 115, 185; Misc., 195, 291.
Burntisland	1541	Constitution, 115, 182; Sets, 61.
*Campbeltown	1700	Constitution, 124, 216; Sets, 72.
Cullen	1617	Constitution, 203; Sets, 64; Misc., 226; Annals of Cullen, *pass.*; Cramond, Inventory, *pass.*
Culross	1588	Constitution, 89; Misc., 216; Beveridge, Culross, i. 296, 316, ii. 162; Rec. of Conv., v. 135.

[1] Below, p. 206, n. 2; p. 207, n. 1; Black, Royal Burrows, 29; Misc. of Scot. Burghs Rec. Soc., p. xl; Mackenzie, Works, i. 65. A few burghs of barony and regality had a dean of Gild (Dunkeld, Fraserburgh, Kilsyth, Maybole, Rosehearty, etc.).

[2] My chief authority for determining the burghs in which a Gildry or a dean of Gild still exists is Groome's Ordinance Gazetteer, under the names of the respective towns.

[3] A 'Gildry and Gildrymen' were not introduced in Arbroath until 1725, though the privilege had been granted in 1599. (Rec. of Conv., v. 161, 369, 373.) Likewise in Culross in 1668 and in Brechin in 1658, though the grant had been made in 1588 and 1601 respectively. (Ibid., iii. 464, 568, 578, 588, 602–606.) It should also be noted, in connection with the list of Gild Towns, that a burgh often had a dean of Gild without having a Gildry fraternity. (Munic. Corp. Com., Scotl., 1835, pp. 61, 63, 190; 1836, p. 68.)

Name.	Date.	Authorities.
*Cupar	1369 . . .	Acta Parl. Scot., i. 509 [176]; Charters of Cupar, 7; Constitution, 177; Sets, 42.
*Dingwall	1497 . . .	Constitution, 98, 212; Sets, 57; Munic. Corp. Com., Scotl., 1835, p. 190.
*Dornoch	1648 . . .	Misc., 293; Constitution, 105.
*Dumbarton . . .	1609 . . .	Constitution, 87, 190; Sets, 45.
*Dumfries	1827 . . .	McDowall, Dumf., 310, 311, 651[1].
Dunbar	1603 . . .	Constitution, 117; Miller, Dunbar, 250; Rep. of Com., 1793, p. 18.
Dundee	1249–86 . .	Warden, Burgh Laws, *pass.*; Charters of D., 9; Thomson, Dundee, 255; Acta Parl. Scot., iii. 232; Mackie, Dundee, 207, 208; Misc., 166, 289; Sets, 14; Munic. Corp. Com., Scotl., 1835, pp. 229, 233; Beatts, Dundee, 46, *et pass.*; Roll of Burgesses, 2–7[2].
*Dunfermline . .	1395 . . .	Chalmers, Dunf., i. 389, 399; Constitution, 188; Sets, 24; Misc., 201, 240–260; Henderson, Dunf., 192, 307, 323, 408, 421; Rep. of Com., 1819, pp. 429–455.
Dunkeld	1704 . . .	Munic. Corp. Com., Scotl., 1836, [pt. ii.], p. 42.
*Edinburgh . . .	1403 . . .	Below, p. 216, n. 1.
Elgin	1234 . . .	Carlisle, Top. Dict., 'Elgin'; Munic. Corp. Com., Scotl., 1835, p. 425; Sets, 53; Constitution, 104; Young, Annals of E., 157–159, 549–552[3].

[1] In 1709 the municipal authorities of Dumfries asserted that their burgh was not a 'gild-town,' i. e. it had no Gildry. (Misc., 180; Sets, 75.) See also Rec. of Conv., iii. 445, 537, 559.

[2] In 1325 a jury stated that during the reign of Alexander III, Dundee had 'eandem libertatem emendi et vendendi per aquam et per terram sicut aliqui burgenses per totum regnum Scocie liberius aut quiecius habuerunt aut possederunt, videlicet in nundinis, in mercato, in libero portu, cum accessu nauium, oneracione et exoneracione earundem, cum gilda mercatoria et aliis libertatibus universis sicut liberi burgenses.' (Munic. Corp. Com., Scotl., 1835, p. 238.)

[3] Alexander II in 1234 granted the burgesses of Elgin 'Gildam suam mercatoriam adeo libere et sicut aliqui burgorum nostrorum in toto regno nostro Guildam suam habent.' (Shaw, Moray, 238.)

Name.	Date.	Authorities.
Forfar	1372 . . .	Hist. MSS. Com. 1871, p. 206; Talbot, Case of Forfar; Constitution, 123; Munic. Corp. Com., Scotl., 1835, p. 444.
*Forres	1711 . . .	Constitution, 200; Sets, 48; Munic. Corp. Com., Scotl., 1835, p. 451.
*Fortrose	1708 . . .	Constitution, 215; Sets, 49; Misc., 213.
Fraserburgh . . .	1588 . . .	Munic. Corp. Com., Scotl., 1836, [pt. ii.], pp. 64, 172.
Galloway, New . .	1629 . . .	Constitution, 94.
*Glasgow	1605 . . .	Hill, Merchants' House, 15; and below, p. 221, n. 4.
Greenock	1797 . . .	Williamson, Old Greenock, 181.
*Haddington . . .	1655 . . .	Munic. Corp. Com., Scotl., 1836, p. 68; Miller, Lamp of Lothian, 486; Rec. of Conv., iii. 381, 423, 452.
Inverary	1648 . . .	Constitution, 96.
*Inverbervie . . .	1709 . . .	Ibid., 210; Sets, 52.
*Inverkeithing . .	1598 . . .	Constitution, 121, 183; Sets, 36.
*Inverness	1676 . . .	Constitution, 181; Sets, 15; Munic. Corp. Com., Scotl., 1836, p. 113.
*Inverurie	1619 . . .	Constitution, 209; Davidson, Inverurie, 206.
*Irvine	1371 . . .	Robertson, Index, 95; Sets, 71; Constitution, 109, 185 [1].
*Jedburgh	1692 . . .	Sets, 65; Munic.Corp. Com., Scotl., 1836, pp. 133–135; Misc., 106.
Kelso	1836 . . .	Munic. Corp. Com., Scotl., 1836, [pt. ii.], p. 97; Haig, Kelso, 100, 101.
*Kilmarnock		Groome, Gaz., iv. 376.
Kilsyth	1836 . . .	Munic. Corp. Com., Scotl., 1836, [pt. ii.], p. 106.
Kinghorn	1611 . . .	Constitution, 85.
*Kintore		Groome, Gaz., iv. 411; Munic. Corp. Com., Scotl., 1836, p. 153.

[1] The royal charter of 1371 contains the following:—'quod burgenses de Irwyne teneant illud burgum in liberum burgum, absque exactione cujuscunque tollonei, seu alterius cujuslibet servitutis; et quod gaudebunt Gylda, et omni Gylde libertate qua alii quicunque regni burgenses hactenus sunt gavisi.' (Robertson, Index of Charters, 95.)

Name.	Date.	Authorities.
Kirkcaldy . . .	1644 . . .	Constitution, 114; Sets, 60; Munic. Corp. Com., Scotl., 1836, p. 158; Misc., 176, 276; below, p. 223.
*Kirkwall	1712 . . .	Constitution, 217; Sets, 55.
*Lanark	1631 . . .	Sets, 47; Munic. Corp. Com., Scotl., 1836, p. 190; Misc., 206; Davidson, Lanark, 28–30.
*Linlithgow . . .	1709 . . .	Constitution, 171; Sets, 46; Munic. Corp. Com., Scotl., 1836, p. 228.
*Lochmabin . . .	1612 . . .	Constitution, 110; Sets, 75.
Maybole . . .	1589 . . .	Munic. Corp. Com., Scotl., 1836, [pt. ii.], p. 173.
*Montrose	1372 . . .	Hist. MSS. Com. 1871, p. 206; Sets, 50; Documents on Reform, 78–90; Munic. Corp. Com., Scotl., 1836, p. 242; Misc., 178, 287[1].
*Nairn	1589 . . .	Constitution, 100; Misc., 292.
*Peebles	1621 . . .	Charters of Peebles, 85; Constitution, 196; Sets, 46[2].
*Perth	1165–1214 .	Acta Parl. Scot., i. 86 [76]; Munic. Corp. Com., Scotl., 1836, pp. 299, 307, 310; Hunt, Perth Hammermen, Introd.; Irving, Dumbartonshire, i. 5; Documents on Reform, 117; Marshall, Perth, 442–445.
*Renfrew	1703 . . .	Constitution, 88; Sets, 42.
Rosehearty . . .	1681 . . .	Munic. Corp. Com., Scotl., 1836, [pt. ii.], p. 148.
*Rutherglen . . .	1617 . . .	Munic. Corp. Com., Scotl., 1836, pp. 371, 374; Ure, Rutherglen, 15, 62.

[1] 'Montrose, wham ne'er a town surpasses
For growling Guild and ruling asses.'
Warden, Angus, i. 249.

[2] In 1621 James VI granted the burgh of Peebles power 'frequentandi, vtendi et exercendi mercaturas, *lie trade and trafficque of merchandice*, emendi, transigendi, vendendi et revendendi omne genus mercantiarum, tam peregrinarum quam conterranearum, non solum infra libertatem et territorium ac jurisdictionem dicti nostri burgi sed etiam infra omnes alias partes infra integras bondas vicecomitatus nostri de Peblis tam regalitatis quam regalis . . . ac infra eundem burgum et territorium eiusdem pro perpetuo mercatorum gilda gaudendi, fruendi et possidendi, cum gildarum curiis, concilio, membris et jurisdictione eidem pertinentibus, libertatibus et priuilegiis huiusmodi, similiter et adeo libere sicuti per nos aut predecessores nostros quibusuis liberorum nostrorum burgorum regalium infra dictum regnum nostrum Scocie concessa sunt.' (Charters of Peebles, 85.)

Name.	Date.	Authorities.
*St. Andrews . . .	1591 . . .	Register of Privy Counc., v. 61–65, vi. 276; Documents on Reform, 115; Misc., 169–171, 282–286.
*Sanquhar	1598 . . .	Constitution, 94, 206; Sets, 74; Misc., 238.
*Selkirk	1694 . . .	Brown, Selk., ii. 183–186; Constitution, 213; Sets, 46.
*Stirling	1226 . . .	Charters of S., 6–9, 143, 218–221; Munic. Corp. Com., Scotl., 1836, pp. 403, 409; Gen. Hist. of S., 56–67; Register of Privy Counc., iii. 216; Constitution, 169; Sets, 21; Extracts from Records of S., *passim*; Misc., 167, 269.
Stonehaven . . .	1836 . . .	Munic. Corp. Com., Scotl., 1836, App., p. 94.
*Stranraer	1617 . . .	Constitution, 97, 210; Sets, 70.
*Tain	1671 . . .	Constitution, 122, 197; Sets, 58; Rec. of Conv., iv. 494.
Thurso	1633 . . .	Munic. Corp. Com., Scotl., 1836, [pt. ii.], p. 162.
*Wick	1589 . . .	Constitution, 106, 215; Sets, 56; Munic. Corp. Com., Scotl., 1836, p. 433; Misc., 235, 274[1].

§ 2. *Early History. Berwick Statutes.*

Let us first glance at the history of the Gild in the period prior to the fifteenth century, a period in which the national records of Scotland furnish us with the principal data. According to a law of William the Lion (1165–1214), the merchants of the realm were to have their Gild Merchant with the liberty of buying and selling everywhere within the bounds of burghs[2]. Merchant strangers were not to buy or sell outside of burghs, nor were they to cut cloth and offer it for sale, nor sell anything else by retail, but only in gross, and that only within burgh and to the merchants of the burgh. Any merchant strangers found guilty of breaking this law

[1] In 1692 there were 65 royal burghs in Scotland. (Misc., xcvii.) Of these 54 appear in my list of Gild Towns.

[2] 'Item, statuit quod mercatores regni habeant gildam suam mercatoriam et ita gaudeant in pace cum libertate emendi et vendendi ubique infra limites libertatum burgorum,' etc. (Assise Regis Willielmi, c. 39. Acta Parl. Scot., i. 383 [61]; Innes, Anc. Laws, 60.) See also above, p. 197.

were to be arrested by the officers of the Gild and punished[1]. An ancient law, the date of which is not known, enacts that if a gildsman fall into poverty, the brethren of the Gild shall help him by a donation from the common stock of the Gild, or make a collection for him; and if he die, they shall have him buried[2]. According to a law made by the Court of Four Burghs in 1405, no Templar was to buy or sell merchandise pertaining to the Gild, unless he were a Gild brother[3].

It is evident from these passages that in Scotland, as in England, the object of the Gild was the maintenance and regulation of the burgh's trade monopoly. Foreigners or strangers could not sell to each other[4]; they could not retail cloth or other wares[5]; nor purchase certain articles, above all, wool and hides[6]. If a merchant stranger brought merchandise to a burgh, he was obliged first to offer it for sale to the dean of Gild or to the town council, and no other person was to buy these wares for less than the price at which it was so offered. If the dean of Gild bought it, he disposed of it to the members of the Gild, the profits flowing into the town treasury[7].

[1] 'Et si aliquis extraneus mercator faciens in contrarium reperiatur, capiatur per ministros de gilda et detineatur et puniatur tanquam defensionem regiam confringens.' (Ibid., c. 41. Acta Parl. Scot., i. 383; Innes, Anc. Laws, 61.)

[2] '*Lex bona de fratribus gilde.*—Si aliquis de fratribus gilde deuenerit pauper, fratres gilde ipsum adiuuent de bonis gilde, aut faciant collectam per ville communitatem vsque viginti solidos, et si obierit ipsum venerabiliter facient sepeliri.' See Innes, Anc. Laws, 161; Acta Parl. Scot., i. 719 [355].

[3] 'Item, quod nullus Templarius debet se intromittere cum aliquibus mercimoniis vel bonis pertinentibus ad gildam emendo vel vendendo infra terram suam vel extra nisi fuerit confrater Gilde.' (Ibid., i. 704 [340]; Innes, Anc. Laws, 158.)

[4] Charters of Dundee, 9.

[5] 'Nullus emat coria, lanam, aut pelles lanutas ad revendendum, aut pannos scindat, nisi fuerit confrater gilde nostre.' (Berwick Gild Statutes, c. 23. Acta Parl. Scot., i. 435 [93*]; Innes, Anc. Laws, 74.) See also Charters of Dundee, 9; Hay, Arbroath, 309; Hill, Merchants' House, 124; Acta Parl. Scot., i. 86, 87 [76, 77]; Extracts from Ed. Records, 1573–1589, p. 277.

[6] Acta Parl. Scot., i. pp. 509, 536, 537; Charters of Dundee, 9; Mackie, Dundee, 207, 208; Colston, Gildry of Ed., 63; Extracts from Ed. Records, 1528–1557, p. 142.

[7] The following is from the records of the Ayr Gild, A.D. 1428: 'Curia gilde coram preposito et decano gilde . . . electi fuerunt v. personas (*sic*) pro utilitate gilde, viz. [five names follow], qui electi eodem die et jurati fuerunt ad emendum omnia mercimonia intrantia portus maris ad comodum gilde, et equaliter debent participare sine fraude' (Dickson, Gild Court of Ayr, 225, 226). See also Extracts from Ed. Records, 1403–1528, pp. 4, 37; Skene, Royall-Burghs, 141–143; Thomson, Dundee, 255; Acta Parl. Scot., ii. 373; Dumbarton Burgh Records, 14; Misc., xxxv.; cf. above, pp. 136, 137. The deacon of a craft sometimes made similar purchases for the craftsmen (Bain, Ab. Guilds, 273).

No inhabitants of a royal burgh could engage in foreign trade unless they were brethren of the Gild [1]. The bounds within which the Gild monopoly of a borough prevailed, were generally much more extensive than in England, often embracing a whole county or sheriffdom [2].

The public records of this period also show that gildsmen and burgesses were not synonymous terms. In the fourteenth century it was necessary that each burgh should present to the Chamberlain on his eyre all the names of the burgesses, 'the names of the Gild brethren by themselves and those of the other burgesses by themselves [3].' A manuscript volume compiled early in the fourteenth century gives the oath of admission to burgess-ship, and then states that after the oath was taken by the new burgher he ought to kiss the provost and townsmen ('vicini'), in case he were a brother of the Gild [4]. It is evident from this passage that there were burgesses who were not gildsmen. In the oldest portions of the 'Gild Buick' of Edinburgh there are separate fees for admission to the gildship and the burgess-ship [5].

[1] Bannerman, Guildry of Ab., 19; Chalmers, Dumferm., i. 389, 390; Hay, Arbroath, 309; Mackenzie, Works, i. 65; Munic. Corp. Com., Scotl., 1835, pp. 89, 90.

[2] See above, p. 201, n. 3.

[3] 'Item, petantur in scriptis omnia nomina burgensium infra habitantium et extra, videlicet nomina fratrum gilde per se, et aliorum per se.' (Acta Parl. Scot., i. 695 [331]; Innes, Anc. Laws, 135.)

[4] '*Integrum juramentum burgensis et confratris gilde.*—Quod erit leel et feel domino Regi et communitati illius burgi in quo factus est burgensis. Et quod dabit Regi firmam fideliter pro terra quam defendit. Et quod erit obediens in licitis preposito et balliuis. Et quod celet archanum consilium communitatis. Et si dampnum eorum nouerit premuniet eis uel in hoc ponet remedium si poterit. Et quociens requisitus fuerit pro communi negocio fidele consilium et auxilium eis dabit pro posse suo. Et quod libertates, leges et consuetudines dicti burgi durante vita secundum posse suum manutenebit. —Et facto hujusmodi sacramento osculari debet prepositum et vicinos si frater Gilde fuerit.' (Acta Parl. Scot., i. 683 [319]; Innes, 127.)

[5] Hist. sketch of Ed. Const., xx. For other illustrations of the distinction between gildsmen and burgesses, or gild and borough, see below, p. 212; Bannermann, Guildry of Ab., 7, 15, 19, 21; Munic. Corp. Com., Scotl., 1835, Rep., 11; Ewing, Guildry of Glasg., 8; Hill, Merchants' House, 6, 7. This distinction continued to exist down to recent times. See Hill, Merchants' House, 95; Maitland, Edinb., 234; Extracts from Ed. Records, 1403–1528, p. 113; 1528–1557, p. 148; Crawfurd, Trades' House, 303, 304; Sketch of Ed. Const., 16; Hay, Arbroath, 307; Misc., 190; Munic. Corp. Com., Scotl., 1835, pp. 89, 90, 181, 427, 451: 1836, pp. 93, 113, 130, 190, 228, 295, 383, 409; and below, p. 222. In 1583 the council of Edinburgh expressly calls attention to the 'distinctioun betuix ane gild brother and vthir singill burgessis,' and also speaks of those who are 'nather gild brether nor burgessis.' (Extracts from Ed. Records, 1573–1589, pp. 277, 278).

There were in Scotland, as in England, non-resident as well as resident gildsmen[1].

To this period of Scotch history belong the important 'Statuta Gildae' or the Gild Statutes of Berwick, which, though pre-eminently a Scotch town until the fourteenth century, has been taken by certain writers as the prototype for the early history of the Gild Merchant in England[2]. These Statutes of Berwick were evidently regarded as a model by the other Scotch burghs; for they are found in old collections of the laws side by side with the 'Leges Burgorum,' and an ancient English translation calls them 'the statutis of the gilde of Scotland[3].' Moreover, town charters occasionally refer to the Berwick Gild as an exemplar[4].

Almost all writers who in recent years have emphasised the importance of these Gild laws, have followed the old and badly-edited versions of Skene or Houard, evidently not being aware of the existence of Cosmo Innes's scholarly edition in the Acts of the Parliament of Scotland (1844) and in the same author's Ancient Laws and Customs of the Burghs of Scotland (1868)[5]. Innes's edition differs very materially from the older ones. Not to speak of important variations in the wording of the text, it is evident that the Berwick Statutes are not, as the older versions would lead us to suppose, the result of local legislation extending over only a few months in the years 1283–1284[6]; but that they constitute several separate bodies of enactments made at long intervals extending from about 1249 to 1294.

See also ibid., 273, 274; Rec. of Conv., i. 449, iii. 486; Rep. of Com., 1819, pp. 104, 385, *et pass.*

[1] About the year 1431 there were nineteen 'confratres gilde extra manentes' connected with the Gild of Ayr. (Dickson, Gild Court of Ayr, 229.) See also Rec. of Conv., i. 98; above, p. 209, n. 3, and below, p. 240.

[2] See below, p. 212, n. 1.

[3] Acta Parl. Scot., i. 431 [89*]; Innes, Anc. Laws, 64.

[4] Charters of Dundee, 9; Munic. Corp. Com., Scotl., 1835, p. 239. Cf. Warden, Burgh Laws, 88; Misc., lxiv.

[5] They are also printed in Colston's Guildry of Edinburgh, 91–114; Houard, Traités, ii. 467, *et seq.*; Wilda, Gildenwesen, App.; Thierry, Récits, Pièces Justif. An old English version will be found in Scott's Berwick, 465–469. See also English Gilds, 338–346; Merewether and Stephens, 563–567. The texts commonly cited are those of Houard and Wilda. Wilda's text is a careless reprint of Houard's. The latter adopted uncritically the readings in the Veteres Leges of Skene, whom Innes (Anc. Laws, p. xxi.) calls 'the most incompetent editor of a not unlearned age and country.' Innes's text is printed below, pp. 227–240.

[6] Most writers speak as though these statutes were all made in 1283–1284. See, for example, English Gilds, pp. xcix, 346; Colston, Guildry of Edinb., 30, 37; Wilda, Gildenwesen, 254; Walford, Gilds, 27, 30; Thierry, Récits, Pièces Justif.; Ashley, Econ. Hist., 67; Drioux, Assoc., 139; Von Maurer, Städteverf., i. 168.

The preamble states that these Statutes (i.e. the first of them) were made by Robert de Bernham[1], Simon Maunsell, and other good men of the burgh, in order that the many bodies congregated in this one place might be in unity and concord ('ut per multa corpora in uno loco congregata sequatur et unica voluntas,' etc.); so that no particular congregation of burgesses may encroach upon the liberty of the 'general Gild' ('generalis Gilde'), break its statutes, or in the future take counsel against it. All particular gilds shall be dissolved, and their property shall be given to the new gild; no other gild shall hereafter be formed, but all are to be united in one firm fellowship and in one true friendship ('una societas firma et amicitia verissima')[2].

Sections 3–17 of the Berwick Statutes relate to legacies of the brethren, their attendance at funeral services, fines for improper conduct, entrance-fees, relief to brethren in distress, etc. These fifteen articles probably constitute the earliest body of enactments made by the Gild. They deal exclusively with the affairs of the fraternity, not with those of the burgh at large. They may be old regulations of the Gild Merchant, made while it was a strictly private society, that is to say, before it became an integral and official part of the town government[3]. The next five statutes deal with lepers, the throwing of filth in the highway, the mode of pleading in the town courts, the compulsory possession of horses by burgesses, and the use of hand mills. Sections 23–34 treat of mercantile affairs, regulating the sale of wares, etc. Sections 35–38 have to do with the general government of the town; and the last thirteen sections deal chiefly with the regulation of trade and industry. Sections 42–51 were made in the years 1281–1294.

Doubtless the 'general Gild' formed by the union of the various fraternities at Berwick was a Gild Merchant. This is evident from the provision that only brethren of the Society were to buy the staple articles of the town or to sell cloth by retail[4].

Brentano and his followers rely upon these Statutes as their chief evidence in support of the theory that the germ of the municipal constitution both in Great Britain and on the Continent was an old Frith or Merchant Gild, which comprehended all the burgesses; that, in the course of time, other gilds sprang up and, after a struggle with

[1] Robert de Bernham was mayor of Berwick in 1248-1249. (Acta Parl. Scot., i. 44 [38]; Scott, Berwick, 61.)

[2] C. 2.

[3] Cf. the Southampton Statutes (vol. ii. p. 231).

[4] Above, p. 208, n. 5.

the original Gild Merchant, united with the latter to form a single fraternity[1]. That there was a conflict among various gilds at Berwick before their union is quite probable; but the rest of Brentano's hypothesis receives very little confirmation from these Statutes.

The key-stone of his theory is the assumption that the Gild of Berwick constituted the whole municipal government, the terms gildsmen and burgesses being synonymous. A careful examination of the Berwick Statutes will show that this was not the case. The Gild administration and the town administration, though intimately connected, were evidently regarded as distinct conceptions, 'gilda' being applied with preference to the one, and 'burgus' or 'communitas' to the other[2]. The alderman, dean, and ferthingmen presided over the Gild[3], the mayor and bailiffs presided over the borough as such[4]. Certain fines and forfeitures fell to the Gild, others to the bailiffs of the town[5]. Gildsmen and burgesses are distinguished even more clearly than 'gilda' and 'burgus,' 'burgensis' being used with preference when matters of general interest to townsmen rather than to merchants or gildsmen are spoken of[6]. One enactment applying to all burghers ('quicunque burgensis') concludes with the important reservation: 'this is to be understood of brethren of the Gild and not others' ('et hoc intelligendum est de confratribus Gilde et non de aliis')[7], which seems to imply that most or all gild-brethren were burgesses, but not *vice versa*. The Gild would thus consist of the more privileged burgesses, and was doubtless a very influential body which could easily control the counsels of the borough. This aristocratic trait was, as I shall soon show, a characteristic of the Scotch Gild Merchant, in general, as distinguished from that of England.

The later general history of the Scotch Gild Merchant enables us

[1] English Gilds, xcix., c.; Walford, Gilds, 27, 28, 70; Winzer, 81; Gierke, i. 243, 345; and above, p. 170. Cf. Wilda, Gildenwesen, 254, 255.

[2] CC. 2–17, 27, 28, 34, *et pass.* ('fratres Gilde,' etc.); 31, 34, 37, 38, 42 ('villa,' 'tota communitas ville,' etc.).

[3] CC. 6, 7, 9, 12, 13, 17, 25, 39, 47.

[4] 'Statuimus . . . quod communia de Berwico gubernentur per viginti-quatuor probos homines . . . una cum majori et quatuor prepositis' (c. 37). 'Statuimus quod maior et prepositi eligantur per visum et considerationem tocius communitatis' (c. 38). See also cc. 2, 20, 32, 43. The mayor of the borough and the alderman of the Gild continued to exist as distinct officers down to recent times. See vol. ii. p. 20; Scott, Berw., 257, 259.

[5] C. 2. See also c. 43 ('. . . tercia pars remanere debet Balliuis Burgi et residuum ad Gildam').

[6] CC. 3–17, 23, 25; cf. cc. 21, 35, 39, 40. Note also such expressions as 'fratres Gilde et burgenses ville' (cc. 11, 50, 51).

[7] C. 41.

to understand the relations between the Gild and borough in the Berwick Statutes. It is certain that from the fifteenth to the nineteenth century the powers and functions of the Gildry were very extensive, covering a large part of the area of municipal government, but by no means the whole of it; that the gildsmen were generally burgesses, but many burgesses were not gildsmen; and that the gildsmen generally had a dominating influence in the administration of the burgh [1].

Whether the above interpretation of the 'Statuta Gildae' is the correct one or not, I wish to protest earnestly against their being used as one of the chief sources for the history of the English Gild Merchant. Like most other records of Scotch Gilds, they throw light upon the development in England as much by contrast as by analogy.

§ 3. *Later History. Conflict with Crafts.*

Let us now pass to the second period of the history of the Scotch Gildry. The latter seems to have been from the outset a more aristocratic body than the Gild Merchant of England, the line of demarcation between merchants and craftsmen being much more sharply defined. The 'Leges Burgorum' of the twelfth century enact that no dyer, butcher, or cobbler should be admitted to the Gild, unless he abjure the exercise of his craft by his own hand, leaving it to his servants [2]. By § 30 of the Berwick Statutes 'it is ordained that no butcher, as long as he chooses to practise his trade, buy wool or hides, unless he will abjure his axe and swear that he will not lay his hand upon beasts [3].' At Aberdeen, Stirling, and Perth the fullers and weavers seem to have been excluded from the Gild Merchant as early as the thirteenth century [4]. Nothing, however, indicates that

[1] See below, pp. 214-224; and the references given above, p. 209, n. 5.

[2] 'Nullus tinctor vel carnifex vel sutor potest esse in gilda mercatoria nisi abiuret facere officium suum manu propria sed per servientes suos sub se.' (Leges Burgorum, c. 94. Acta Parl. Scot., i. 351 [39]; Innes, Anc. Laws, 46. Cf. Acta Parl. Scot., i. 702 [338]; Innes, 152.) The Ayr MS. (of the early part of the fourteenth century) adds 'piscator' to the men of trades excluded from the Gild Merchant (Innes, Anc. Laws, 46).

[3] Acta Parl. Scot., i. 436 [94*]; Innes, Anc. Laws, 78. For other regulations concerning the butchers, see Leges Burgorum, c. 64, 65, 67; Statuta Gilde, c. 44; Innes, 31-33, 84; Acta Parl., i. 345, 346, 437 [33, 34, 95*].

[4] Kennedy, Aberdeen, i. 11; Acta Parl. Scot., i. 86, 87; Charters of Stirling, 6-9; Irving, Dumbartonsh., i. 5; Munic. Corp. Com., Scotl., 1836, App. 6. The charter granted by William the Lion to Perth, about 1210, has the following:—'Concedo etiam burgensibus eisdem meis de Perth ut habeant gildam suam mercatoriam exceptis fullonibus et telariis. Prohibeo etiam fir-

craftsmen as a class were excluded from either the Gild or burgessship[1], though the crafts, as such, had no political power in the civic community. The merchant class was the dominant element in the government of most royal burghs.

As the artisans became wealthier, more numerous, and more conscious of their strength, they felt that their crafts ought to have greater independence, and ought to be allowed to participate in the burghal government. Hence in the fifteenth, sixteenth, and seventeenth centuries a bitter struggle raged in many burghs between the tradesmen or crafts and the merchants or Gildry, the conflict reaching its height in the sixteenth century. The main question at issue in the fifteenth century was the right of the members of each craft to meet and choose their own chief officer or deacon—the *sine qua non* of self-government. In 1424 an Act of Parliament gave them this privilege; but it was afterwards repeatedly repealed and re-enacted[2]. After securing the right of convening and the election of deacons, the craftsmen aspired to obtain a share in the government of the burgh. Already in 1469 a national law was passed allowing one person from each craft to participate in the election of burghal officers[3]. The main cause of contention during the sixteenth century was the demand of the crafts to be represented in the town councils. Subordinate to this question, though of considerable importance, was the craftsmen's claim of the right to deal

miter ne quis manens extra burgum meum de Perth in vicecomitu de Perth faciat pannum tinctum vel mixtum intra vicecomitatum de Perth nec facere faciat preter burgenses meos de Perth qui sunt in gilda mercatoria et communicant ad auxilia mea cum burgensibus solvenda exceptis illis qui de hac libertate cartam suam hucusque habuerunt' (Acta Parl. Scot., i. 86). The charters of Alexander II (1214–1249) to Aberdeen and Stirling contain similar clauses. It is possible that in these towns, as in Berwick (above, p. 109), the weavers and fullers were mainly Flemings, who perhaps had obtained charters from the King allowing them to form fraternities of their own. In the eighteenth century the weavers and walkers were debarred from being members of the civic Council of Perth, though twelve other craftsmen sat in the latter (Misc., 165). The context of the charters to Perth, Aberdeen, and Stirling shows that there were some burgesses of the Gild Merchant who were engaged in cloth-making. See also Leges Burgorum, c. 20: 'Nullus nisi burgensis potest emere lanam ad tingendum nec pannum facere nec secare' (Innes, Anc. Laws, 11).

[1] According to c. 40 of the Berwick Statutes some skinners and glovers were burgesses, while others were not (below, p. 236). See also the last two sentences of the preceding note.

[2] See Acts of Parl., 1424, c. 17; 1427, c. 4, 3; 1491, c. 19; 1493, c. 14; 1555, c. 26 (Acta Parl. Scot., ii. 8, 14, 15, 227, 234, 497). See also the charters of Mary and James VI (Bain, Ab. Guilds, 79, 329; Warden, Dundee, 82–84; Memorabilia of Perth, 323–330; Rec. of Conv., ii. 469–479).

[3] Acta Parl. Scot., ii. 95.

in merchandise (to import the materials for the manufacture of their wares, to buy goods for resale, etc.). This they had been forbidden to do by various Acts of Parliament[1]. There were several other minor points of controversy, varying in different towns, all caused by the efforts of the craftsmen to secure greater independence—more freedom of action in their relations to the town authorities and in the regulation of their own affairs.

The conflict between the crafts and the Gildry was often settled by a royal 'decreet arbitral,' or through the mediation of the Convention of Royal Burghs[2], the craftsmen in most towns being allowed a certain number of representatives in the burgh council. But it was not a victory such as the crafts on the Continent frequently gained in the fourteenth century; for the Scotch merchants generally remained very much in the ascendancy in the burgh councils[3], and the magistrates were chosen exclusively from their ranks[4].

[1] 1466, c. 2; 1487, c. 13; 1503, c. 38; 1639, *pass.*; 1661, c. 310 (Acta Parl. Scot., ii. 86, 178, 245; v. 273, 275, 277; vii. 284). Cf. Extracts from Ed. Records, 1403–1528, pp. 87, 88; Misc., 187, 190, 191. Mary in 1556 and James VI in 1581 granted charters in favour of the craftsmen of Scotland, allowing them to deal in merchandise; but they do not seem to have been enforced. (Rec. of Conv. of Burghs, ii. 469–479; Bain, Ab. Guilds, 79, 80, 329; Warden, Burgh Laws, 82–84; Memorabilia of Perth, 323–330.) In 1793 it was decided by the courts of law that craftsmen might import all the materials of their respective trades and export wares of their own make; but they could not import manufactured goods. By another decision of 1823 they were allowed to import and sell goods manufactured in England provided that these belonged to their own branch of industry. All restrictions upon craftsmen were finally removed by the Statute of 9 Vict. c. 17. (Munic. Corp. Com., Scotl., 1835, Rep. 77; Misc., lxi.)

[2] Misc., lxxi., lxxii., 209, 216, 240–260; Rec. of Conv., i. 448–450, 460, iii. 61–65, 110, 466, 467, *et pass.*; and below, pp. 220, 223.

[3] Hist. Sketch of Ed. Constit., xxxii.; Extracts from Council Register of Ab., 1570–1625, p. 138; Sets, 25, 61, 75, *et pass.*; Constit. of Burghs, 164–217. In 1552 the Convention of Royal Burghs decreed that there should be two craftsmen and ten merchants on the council of each burgh. (Records of Conv., i. 3; Misc., lxvii.) In 1555 Parliament ordered that no craftsman was to hold office within burgh excepting two of them who were to be chosen yearly on the civic council, and who were also to act as auditors of accounts. (Acta Parl., ii. 498.) In 1681 Parliament increased the number of craftsmen on the council of Dumbarton from two to five 'conform to the orders and customs of other royal burghs where Gildries are erected, who always have a considerable number of trades upon the council.' (Acta Parl., viii. 411.) In the eighteenth century there were generally from one to twelve craftsmen, and from ten to twenty-one merchants in the different burgh councils. In many places the number of merchants in the council was more than double that of the craftsmen. In some burghs the crafts were represented on the burgh council by their deacons. See the references at the beginning of this note; also Misc., 178, 196, 209, *et pass.*; Munic. Corp. Com., Scotl., *pass.*; and below, pp. 217–223.

[4] According to various Acts of Par-

This conflict forms the most striking episode in the history of the Scotch, in contrast with the English, Gild; hence I propose to treat the subject in detail, taking my illustrations chiefly from Edinburgh, Aberdeen, and Glasgow.

The Gildry of Edinburgh is first mentioned in existing records in 1403[1]. It was evidently composed of the merchants, or better class of burgesses, who exercised a controlling influence in the administration of municipal affairs during the fifteenth century. In 1518 the Gildry was re-organized by a charter from the burgh council. The 'Merchants fraternity and Gild brethren' were granted an aisle lately built in the church of 'Sanct Geill'; they were to choose a master of faculty and other officers, who were to 'haif power to put ordour to all maner of merchandice or stapill gudis pertenyng to the gildry,' and to punish all those trespassing against the privileges of the brethren; and 'to haif power to hold courtis quhilkis sall be callit courtis of Gildry.' Moreover, the fraternity was given power to make statutes 'for the common welfare of all merchants of this realm as well beyond the sea as on this side.' Deputies were to be appointed beyond sea to punish trespasses against the statutes of the fraternity. The Gild was given power to raise taxes. It was not to be considered lawful to make any person burgess or Gild brother without the consent of the master and his counsellors. The provost and baillies of the burgh on taking their oaths of office were always to swear to maintain the privileges of the Merchant Gild or Gildry[2].

There can be no doubt that the council granted these extensive powers to the Gildry because the same class predominated in both

liament (1503, c. 28, 25; 1535, c. 35; 1555, c. 26; 1609, c. 15; Acta Parl., ii. 244, 252, 349, 498; iv. 435) only craftsmen could occupy the chief offices of the burgh (provost, baillies, etc.). Cf. below, pp. 217, 220; Misc., lxvi., 191, 196, 249, 277; McDowall, Dumfries, 132. The Convention of Royal Burghs in 1578 enacted that only merchants could represent a burgh in the Convention or in Parliament. (Misc., lxviii., Records of Conv., i. 75.) See also ibid., ii. 411, iii. 80.

[1] 'Prima Gilda Capitalis post festum Beati Michaelis tenta in Pretorio burgi de Edinburgh, conuocatis confratribus gilde et comparentibus, 3 Octobris 1403. Electi sunt officiarii gilde prout sequitur.' The names of a 'prepositus,' 'decanus gilde,' 'seriandi gilde,' and other officers follow. (Extracts from Ed. Records, 1403–1528, p. 1.) For the history of the Edinburgh Gild in general, see Colston, Guildry of Edinb.; Hist. Sketch of Ed. Constitution, xx.–lxx.; Extracts from Ed. Records, *pass.*; Proceedings of Ed. Guildry; Maitland, Ed., 228–240; Munic. Corp. Com., Scotl., 1835, pp. 283, 318; Walford, Gilds, 39–43; Rep. of Com., 1819, pp. 37–53, 104–106, 161–244.

[2] Rep. of Com., 1819, p. 234; Extracts from Ed. Records, 1403–1528, pp. 181–185.

bodies. The earliest reference to an attempt on the part of the crafts to secure from the merchants greater participation in the government of the town appears to be in 1508. In that year the craftsmen petitioned that they might be qualified to serve in the town offices, and that they might be represented in the burgh council by six or eight of their number. The answer which they received was that the council would make no such innovation in the government of Edinburgh without advice from king and parliament[1].

By the middle of the sixteenth century the craftsmen had secured a foothold in the council, in which they were allowed to be represented by two of their number[2]. But they continued to quarrel with the merchants on various matters[3]. The conflict reached its climax in 1582. On October 2nd of that year the crafts protested that it was illegal for the town assessors to vote for the chief civic officers. (These assessors had evidently voted in harmony with the merchants.) The protest of the crafts being disregarded, 'ane gritt multitude of pepill of the craftis assemblit to the number of 200 persones or thairby,' 'the multitude ansuering with tumultuous wordis mening, as apperit, to seditioun . . . thairefter the said people eschit and brak in per force at the said counsalhous dur, invading and persewing the said bailleis and counsaille with contumelious and dispytfull wordis.' At length, on October 13th, it was agreed that all matters in dispute should be adjusted by six arbiters. Their decision was rejected by the craftsmen, and James VI chosen as oversman. On April 22nd, 1583, he and the six arbiters issued a decree, which settled the controversy[4].

According to this 'Decreet Arbitral' of 1583[5], the magistrates and town officers, such as provost, baillies, dean of Gild, and treasurer, were to come from the estate or calling of merchants. The council

[1] Extracts from Ed. Records, 1403–1528, p. 118.

[2] Sketch of Ed. Constit., xxviii.; Extracts from Ed. Records, 1557–1571, pp. 83, 122, 185. In 1552 the council consisted of ten merchants and two craftsmen. (Misc., lxvii.) The crafts continued to be thus represented by only two of their number until 1583.

[3] Extracts from Ed. Records, 1557–1571, pp. 52–56, 90, 93, 150, *et pass.*; 1573–1589, pp. 32–34, 51, 57–58, 85.

[4] Extracts from Ed. Records, 1573–1589, pp. 250–265, 569–571.

[5] The document is printed in Acta Parl. Scot., iii. 360–364; Sketch of Ed. Constit., 1–19; Documents on Reform, 28–38; Extracts from Ed. Rec., 1573–1589, pp. 265–275; Misc., 161–164; Maitland, Ed., 229–235; also printed separately under the title, 'The Sett or Decreet Arbitral,' etc. Supplementary articles were added by the town council in June, 1583. (Extracts, 277–279.)

was to consist of ten merchants and eight craftsmen (six deacons and two other craftsmen), together with the seven principal town officers, namely, the provost, four baillies, dean of Gild and treasurer. The mode of election of the town officers, the town council, and the deacons of the fourteen crafts is then carefully regulated. No unlawful meetings of merchants or craftsmen were to take place; but the dean of Gild could assemble his brethren and council in their Gild courts, and any one craft could convene for the transaction of lawful business. 'Item, toward the lang contrauersies for the gildrie, it is finallie with commoun consent appointit, aggreit and concludit that alsweill craftismen as merchandis salbe ressauit and admittid gild brether[1], and the ane not to be refusit nor secludit thairfra mair nor the vther, thay being burgesses of the burgh als meit and qualifeit thairfoir; and that gild brodor to haif libertie to vse merchandice; thair admissioun and tryell of thair qualificatioun to be in the power and handis of the provost, baillies, thesaurare and counsell with the deane of gild and his counsall, quhilk sall consist in equall nowmer of merchantis and craftismen gild brether, not exceding the nowmer of sex personis by [i.e. not reckoning] the deane of gild himself.' One of Edinburgh's representatives in Parliament and in the Convention of Burghs is to be chosen by the provost and baillies from the craftsmen; said person is 'to be ane burges and gild brother of the burgh.' The auditors of the town accounts are to consist of an equal number of merchants and craftsmen. Further on it is stated that 'the merchantis and craftismen of this burgh ar now to be incorporat in ane societie and to make ane haill toun and commoun weill,' which reminds us somewhat of the wording in the preamble of the Berwick Statutes.

But the contest between the merchants and craftsmen of Edinburgh did not end with the Decree Arbitral. In the seventeenth and eighteenth centuries disputes between the two bodies frequently broke out, the crafts seeking to secure more freedom in the election of their deacons, and to place greater power in the hands of the latter and of the head deacon or convener[2]. In 1729 the Earl of Islay was chosen arbitrator, and in 1730 issued his decree arbitral, which regulates various matters in dispute, defining the powers of the deacons of crafts, etc.[3]. He recognized the office of convener

[1] In 1577 the council refused to admit certain craftsmen to the Gildry unless they consented to give up their crafts. (Extracts, 57, 58, 62.)

[2] Sketch of Ed. Constit., xxx.–xxxvi.

[3] This decree is printed in Sketch of Ed. Constit., 20–26; Documents on Reform, 38–41; Maitland, Ed., 235.

as lawful. By-laws made by the crafts were to have no force unless ratified by the magistrates and council.

In 1763 the crafts made a futile attempt to secure uncontrolled power in the election of their deacons[1]. Other conflicts took place between the merchants and craftsmen[2]; but the two Decreets spoken of above continued to form the basis of the municipal constitution of Edinburgh down to the reforms of the nineteenth century.

The Gild Merchant of Aberdeen is mentioned as early as 1222[3]. Violent conflicts between the merchants and the craftsmen broke out in the sixteenth century. One of the chief matters in dispute was the composition or dues charged when new members were admitted to a craft. The council claimed that these entrance fees interfered with the payment of dues demanded for admission to the freedom of the burgh. In 1579 a number of craftsmen were arrested for taking such fees, and the burgh council ordained that the deacon of every craft shall present all persons desiring to be free of the said craft to the dean of Gild; the deacons of crafts are to take no fees from such persons until after the dean of Gild has exacted what is due to the town authorities[4].

In 1581 a controversy arose between the Gildry and crafts of Aberdeen concerning the latter's right to deal in merchandise. In that year the craftsmen secured a charter from James VI allowing them 'to use and exerce all maner of merchandize within our said Realme, and outwith the same, as they shall think most expedient,'

[1] Sketch of Ed. Constit., xliii.

[2] Ibid., xlvi., *et seq.*—The Gildry or Gild Merchant is not to be confused with the Company of Merchants or Merchant Company of Edinburgh, which was established in 1681, and is still in existence. According to its foundation charter, the Company was to include all the 'merchants, sellers or importers of cloths, stuffs or other merchandise, for the apparel or wear of the bodies of men and women, Burgesses and Guild Brethren of the said burgh.' The charter also states that 'none shall have liberty to exercise the trade of the Company within the City of Edinburgh or privileges thereof, unless they join the Company.' See Mackie, Merchant Company of Ed., 5, *et seq.*; Acta Parl. Scot., ix. 334; Munic. Corp. Com., Scotl., 1835, p. 320; Colston, Guildry, 79.

[3] Bain, Aberdeen Guilds, 36; Acta Parl. Scotl., i. 87; Munic. Corp. Com., Scotl., 1836, App. 6; Kennedy, Ab., i. 11. For the Gildry of Aberdeen in general, see Bain, *pass.*; Bannerman, Guildry of Ab.; Kennedy, Aberd., i. 11, 150–164; Report of Guildry of Ab.; Constitution of Burghs, 125; Hist. MSS. Com., 1870, p. 122; Extracts from the Council Register, *pass.*; Colston, Guildry of Ed., 184–197; Constitution of Royal Burghs, 129-164; Rep. of Committee of Dean of Guild's Assessors; Walker, Deans of Guild; Misc., 166; Analecta Scotica, ii. 296–321; Spalding Club, Misc., v. 48–181; Rep. of Com., 1793, pp. 3–24.

[4] Bain, Aberdeen Guilds, 76, 77.

notwithstanding the Act of Parliament of 1466. But the brethren of the Gild compelled the craftsmen to renounce the privileges granted in this charter[1].

These and other matters in dispute, especially the representation of the crafts in the burgh council, were settled in 1587. This agreement, known as the Common Indenture, was made 'betwixt the saidis provest, bailleis, counsaill and brethrene of gild on ye ane part, and ye saides craftsmen on ye other'; and was formally ratified upon the 6th day of August, 1587. Its aim was to end 'all contests and debates betwixt the said brethren of gild and craftismen for avoiding of the said debates whilk has been amang them in time bygane.' The first point settled in this agreement relates to the admission of craftsmen to the freedom of the town and of the various trades. Such persons were first to present themselves to the council to be made free burgesses of the burgh. Then they were to be admitted to their respective crafts. The composition or entrance fee for admission to any craft was fixed; the deacons being ordered to hand over two-thirds of such monies to the dean of Gild for the common charges of the town. The craftsmen were not to 'meddle with na kind of foreane nor oversea wares.' And as regards the holding of the principal town offices, 'we decern that na craftismen sall aspyre thereto unto the time that they be promotit to be bretheren of gild.' Two of them, however, were to be appointed auditors of the town accounts. Lastly, the Common Indenture permits craftsmen to buy and sell such articles as butter, sheep, raw cloth and cloth made in their own houses; but they were not to deal in any staple goods, such as fish, hides, skin, and wool; the handling of these 'sall properly appertain unto the merchants bretheren of gild allenarly[2].'

New disputes between the merchants and craftsmen of Aberdeen took place within a few years after this agreement. In 1595 a quarrel concerning the election of magistrates was referred to the Convention of Burghs. The latter decided that the two craftsmen of the old council and the two of the new together with the six deacons of crafts were to have a vote in the election of magistrates or town officers. The two representatives of the crafts in the town council generally voted as the convener court directed them[3]. The

[1] Bain, Aberdeen Guilds, 79, 80.
[2] Ibid., 81–84, 331–336.
[3] Ibid., 85–88; Extracts from Council Register, 1570–1625, p. 138; Rec. of Conv., i. 460.

convenery or convention of craft deacons came into being towards the close of the sixteenth century[1].

Contests between the Gildry and crafts continued to occur even in the present century[2]. But the Common Indenture of 1587, which was confirmed by royal charter in 1617 and was ratified by Parliament in 1633, remained the basis of the municipal constitution down to the Burgh Reform Act of 1833[3].

We do not meet with any mention of the Gildry of Glasgow[4] until the beginning of the seventeenth century; it probably did not exist long before that period[5]. On November 8, 1604, the deacons of the fourteen incorporated trades or crafts assembled in one place, and 'the whole body of the merchant rank' in another, for the purpose of removing 'the ill-blood, strife, and contention' between the two bodies[6]. The deacons of crafts named a committee of twelve, and the merchants also appointed a committee of twelve, as commissioners 'to consult, reason, and conclude.' These twenty-four nominated four persons to arbitrate on the matters in dispute. The result was an agreement or decree arbitral, commonly called 'The Letter of Guildry,' which was signed by the commissioners on February 6, 1605, and approved by the magistrates and council of Glasgow on February 9, 1605. It was agreed that 'there shall be, in all time coming, a dean of Gild and a deacon conveener.' The

[1] 'A convener of deacons is first heard of when the crafts had to combine for their common interests against what they considered encroachments in their privileges by the merchant class of burgesses.' (Bain, 42, 76.) Bain (pp. 44–46) gives a list of the deacon-conveners of Aberdeen from 1587 to 1886. See also ibid., 122–142.

[2] Ibid., 90–97. In a contest that took place in 1638 the crafts convened 'with swords, pistollis, and lang wapynnes.' (Extracts from Council Reg., 1625–1642, pp. 125–127.) See also Records of Conv., i. 312–383; Misc., lxxi.; Abredoniae Descriptio, 20.

[3] Bain, 84, 90.

[4] For the history of the Gildry of Glasgow, see Ewing, View of Guildry of Glasgow; Hill, View of Merchants' House; Crawfurd, Trades' House; Merchants' House, Regulations; Campbell, Cordiners; Gordon, Glasghu Facies; Extracts relating to River Clyde; Senex, Glasgow, i. 1–21; Misc., 171–174, 261–266, 286, 287; Extracts from Gl. Records, *pass.*; Glasgow Archaeol. Soc. Trans., 1859, i. 29–37.

[5] In 1582 it was enacted that a president of the merchants should be elected as in other burghs. (Extracts from Gl. Rec., 1573–1642, p. 95.) This may refer to a dean of Gild. But the latter is not mentioned in the lists of town officers (given in the Extracts from Glasgow Records) until 1605. In 1595–1598 the Convention of Royal Burghs tried to induce the magistrates of Glasgow to establish a Gildry; but they refused to introduce such 'ane grit noveltie.' (Records of Conv., i. 469, 479, 495; ii. 27.)

[6] For examples of such contests in the sixteenth century, see Extracts from Gl. Rec., 1573–1642, pp. 54, 96, 102.

dean of Gild shall always be a merchant, and shall be chosen yearly by the provost, baillies, council, and deacons. The dean of Gild's council shall be composed yearly of eight persons, four merchants 'and four craftsmen and gild brether.' The powers of the dean of Gild's council are then carefully defined. All burgesses residing in the town and bearing its burdens shall be admitted to the Gild on payment of a mark to the dean; 'and shall use all kind of handling and trade that is lawful during all the days of their lifetime.' A merchant must be worth 500 marks before he can be admitted to the Gildry, a craftsmen 250 marks. It shall not be lawful for any one who is made burgess and Gild brother in the future, 'to tapp tar, oil, butter, or to tapp eggs, green herring, pears, apples, corn, candle, onions, kail, straw, bread (except bakers, who may sell bread at all licit times at their pleasure), milk, and such like small things, which is not agreeable to the honour of the calling of a Gild brother.' It shall not be lawful for 'a single burgess, who enters hereafter to be a burgess, and becomes not a Gild brother,' to sell silk, spices, drugs, stuffs above twenty shillings per ell, hemp, iron, wine, etc.; nor to buy by wholesale beef, herring, cloth, tallow, etc. It was also agreed that there should be a 'deacon conveener, who shall ever be of the rank of craftsmen.' He shall 'always be an ordinary counsellor of the town's great council.' 'He shall conveen all the deacons of crafts and their assistants, at such times as occasion shall require, and shall judge betwixt them, and any of them, in matters pertaining to the crafts and callings; and shall make acts and statutes for good order among them, with the advice of the rest of the deacons and their assistants[1].'

The Glasgow Letter of Gildry was ratified by Parliament in 1672[2]. It remained the basis of the civic constitution down to 1833, though some alterations were made in 1747 and 1754[3]. The Merchants' House or Gildry and the Trades' House or the aggregate of the fourteen incorporated crafts of Glasgow still exist.

The contests between the merchants or Gildry and the crafts

[1] Crawfurd, Trades' House, 46–48, 296–315; Hill, Merchants' House, 20–22, 28–30; Ewing, Guildry, 72–92; Campbell, Cordiners, App. In 1605 there were 576 burgesses of Glasgow, 213 of them being merchants and 363 craftsmen. (Crawfurd, 59.)

[2] Acta Parl. Scot., viii. 186; Crawfurd 83, 315, 316.

[3] Hill, Merchants' House, 22, 23; Ewing, Guildry, 13, 94–98. Some amendments of the Letter of Gildry were also made in 1623. (Extracts from Gl. Rec., 1573–1642, pp. 341, 343.) For some conflicts between the crafts and merchants after 1605, see ibid., 258, 382–384; ibid., 1630–1662, pp. 353–355, 407.

were not confined to Edinburgh, Aberdeen, and Glasgow. Other examples are found in the history of Dundee[1], Stirling[2], Perth[3], Dumbarton[4], Brechin[5], St. Andrews[6], Inverness[7], Inverkeithing[8], Montrose[9], Banff[10], Burntisland[11], Haddington[12], Kirkcaldy[13], Elgin[14], Culross[15], Lanark[16], Dunbar[17], Cupar[18], Kirkcudbright[19], and Dunfermline[20].

[1] Disputes took place between the nine crafts and the Gildry of Dundee early in the sixteenth century. Their differences were settled by a Decreet Arbitral in 1527. (Warden, Burgh Laws, 97–101, 240.) In the same century we find the crafts of Dundee united together into one body probably for the purpose of making common cause against the Gildry. (Ibid., 242–249.) Warden gives many documents illustrating the history of the Gildry of Dundee. There was a conflict between the merchants and craftsmen of Dundee in 1604–5, because the latter wished to have four representatives in the burgh council instead of two. (Maxwell, Dundee, 353–368.) See also Rec. of Conv., ii. 582, iii. 297.

[2] Register of Privy Council, iii. 216; General Hist. of Stirling, 57–64. The main cause of dispute at Stirling was the claim of the merchants to exclude the seven incorporated trades or crafts from dealing in certain wares. 'A misunderstanding was produced between the merchants and crafts which lasted many years, and often broke out into quarrels between the individuals of the different communities . . . But, in 1641, when the Town's grand charter was obtained, the convenery court and the guildry got the privileges formerly granted them ascertained, which from their high antiquity were indifferently understood, and not till then regularly defined.' (General Hist. of Stirl., 58–60.) For some documents throwing light on this struggle at Stirling, see Misc., 269–272; Extracts from Rec. of Stirl., 138–145, 174–176. In 1636 the craftsmen asserted that 'the maist part of the merchandis of the said burgh . . . has borne ane very great heatret and malice aganes the haill craftismen of the said toun.' (Ibid., 174.) See also Rec. of Conv., ii. 459, iii. 110, 111.

[3] Memorabilia of P., 108–113, 323–326; Marshall, Perth, 428–434; Misc., 164; Hunt, Hammermen, cvii.–cxv.; Const. of Burghs, 166; Rec. of Conv., iii. 466, 467.

[4] In 1681 it was enacted that the crafts should have five representatives in the town council of Dumbarton instead of two. (Acta Parl. Scot., viii. 411.) See also Misc., 203; Dumb. Records, 89, 90.

[5] Register of Privy Council, 1602, vi. 391; Black, Brechin, 47; Rec. of Conv., iii. 602–606.

[6] Reg. of Priv. Council, 1593, v. 61–65, vi. 276, 277; Rec. of Conv., i. 460.

[7] Documents on Reform, 76–77; Colston, Guildry of Edinb., 36; Sets, 15–19; Misc., 183–192; Rec. of Conv., iv. 559–563, v. 312.

[8] Documents on Reform, 76–77; Misc., 260.

[9] Acta Parl. Scot., vii. 39; Rec. of Conv., iii. 489, 538.

[10] Rec. of Conv., iv. 375–378; Munic. Corp. Com., Scotl., 1835, p. 112.

[11] Ibid., 1835, p. 140; Misc., 277; Rec. of Conv., iv. 18, v. 317.

[12] Misc., 175; Rec. of Conv., iii. 423.

[13] Rec. of Conv., iii. 461–481, 517; Misc., 176, 276.

[14] Misc., 209; Dunbar, Soc. Life, 175, 176; Rec. of Conv., iv. 396, 397.

[15] Misc., 216; Beveridge, Culross, i. 297; Rec. of Conv., iii. 464, 484, 485.

[16] Davidson, Lanark, 30; Rec. of Conv., iii. 481.

[17] Miller, Dunbar, 250, 251.

[18] Rec. of Conv., iii. 406, 418.

[19] Ibid., iv. 406–408.

[20] Sets, 24–36; Misc., 240–260; Rec. of Conv., i. 448, iii. 61, 552, 561.

In fact, this struggle seems to have been common to most of the principal burghs of Scotland in the sixteenth and seventeenth centuries. Queen Mary's charter in favour of craftsmen, granted in 1556, speaks of 'the dissensions, private and public hatreds and contentions of our merchants and craftsmen dwelling within our burghs[1].'

Though the merchants continued to monopolize the chief municipal offices and to retain a dominating influence in the town councils, the result of the struggle was, on the whole, favourable to the craftsmen. It gave them a representation in the burgh council; in some burghs, it secured them as a class more freedom in buying and selling; and it facilitated their admission to the Gildry[2].

The functions of the Gildry in this later period were very important. It was the duty of the dean of Gild and his court to admit persons to the freedom of the town, to adjudicate in disputes between merchants and merchants or merchants and mariners[3], to guard against forestalling and infringements of the monopoly of buying and selling, to supervise the regulations relating to foreign shipping, to suggest measures for promoting the mercantile interests of the town, to receive the indentures of apprentices, to adjust disputes between neighbours in reference to boundaries of estates, encroachments of buildings, etc., to superintend the public works of the burgh as well as the erection of private buildings, the destruction of dangerous ruins, etc., and to see that the prices of wares fixed by the town council were maintained, and that the assize of weights and measures was duly kept[4]. This court of the dean of Gild

[1] Bain, Aberdeen Guilds, 75, 330; Memorabilia of Perth, 323–326; Warden, Burgh Laws, 82, 83; Rec. of Conv., ii. 471. Cf. Extracts from Ed. Records, 1528–1557, p. 234. The charter granted by James VI to craftsmen in 1581 contains words of a similar nature. (Rec. of Conv., ii. 478; Warden, 84.)

[2] Though craftsmen seem to have been admitted to the Gildry in Edinburgh and Glasgow, it remained the rule in most burghs that a craftsman had to renounce his craft before being allowed to enter the Gildry. Thus the burgesses were divided into two well-defined classes, gildrymen or merchants, and craftsmen. See the works referred to in the notes, above, p. 223.

[3] The maritime jurisdiction of the Gildry was superseded by that of the Admiralty Court, *temp.* Charles II. (Acta Parl. Scot., 1681, c. 16.) The jurisdiction of the Gildry in disputes between merchants and merchants gradually vanished in the seventeenth and eighteenth centuries. (Erskine, Inst., Bk. i. Tit. iv. § 24; Hill, Merchants' House, 30.)

[4] For the jurisdiction of the dean of Gild, see Acta Parl. Scot., 1593, iv. 30, c. 38; also ibid., vii. 178, ix. 476, x. 151; Munic. Corp. Com., Scotl., 1835, pp. [54], 4, 19, 91, 205, *et pass.*; 1836, pp. 27, 158, 307, 398, *et pass.*; Black, Royal Burghs, 30, 31; Skene, Royall-Burghs, 140–144; Extracts from Coun-

exercised a jurisdiction distinct from that of the other municipal courts, to which it was in no wise subordinate. Its decisions could be revised only by the national Court of Session [1].

The history of the Scotch Gild Merchant or Gildry thus differs from that of England in two important points, namely, in the inimical relations between the crafts and the Gild, and in the continuance of the Gildry as a separate but constituent part of the burghal administration down to the present day. Other differences worthy of note are the greater power and wider functions of the Gildry and its chief officer, the aggregation of crafts into a convenery or trades' house, and their representation in the councils of a much larger number of towns.

The Scotch Burgh Reform Act of 1833 regulated the relations of the Gildry and crafts to the town councils. No deans of Gild, deacons or representatives of crafts were henceforth to form 'official and constituent members of the town councils.' The functions performed by a dean of Gild in the town council or in the dean of Gild court were henceforth to be performed by a member of the said council, elected by a majority of the councillors. But the dean of Gild in Edinburgh, Glasgow, Aberdeen, Dundee, and Perth, and the deacon convener in Edinburgh and Glasgow were to remain constituent members of their respective town councils, and were to retain their old powers unchanged. The Gildries and crafts in all burghs were to continue to have the management of their own internal affairs [2].

The exclusive privilege of trading in Scotch burghs was abolished in 1846. An Act of Parliament passed in that year states that 'it shall be lawful for any person to carry on or deal in merchandize, and to carry on or exercise any trade or handicraft, in any burgh and elsewhere in Scotland, without being a burgess of such burgh, or a guild brother, or a member of any guild, craft, or incorporation [3].'

cil Reg. of Ab., 1625–1642, p. 48; Extracts from Gl. Rec., 1573–1642, p. 338; Chalmers, Dunferm., i. 399; Sketch of Ed. Const., xxiv, xxv; Hill, Merchants' House, 14, 29–32; Senex, Glasgow, i. 21; Crawfurd, Trades' House, 299; Colston, Guildry, 18, 37, 115; Chalmers, Book of Scot., 65, 66; Hay, Arbroath, 309; Brown, Selk., ii. 183; Maxwell, Dundee, 597; Rec. of Conv., i. 12, 14, 304, 322; ii. 4; iii. 381, 488.

[1] McDouall, Laws, ii. 582; Hill, Merch. House, 14.

[2] Statutes of the Realm, 3 & 4 Wm. IV, c. 76, §§ 19–23.

[3] Statutes, 9 & 10 Victoria, c. 17.

But a dean of Gild and craft fraternities still exist in many Scotch burghs, though the Act of 1846 deprived them of most of their ancient functions[1]. The principal duty of the dean of Gild now is to supervise the erection of buildings,—to see that they do not encroach on private property or on the public streets; and to cause houses in danger of falling to be torn down[2].

[1] For the burghs in which a dean of Gild still exists, see above, p. 203. There are also crafts or trade incorporations in some boroughs; there are twelve in Edinburgh, fourteen in Glasgow, nine in Dundee, eight in Perth, seven in Aberdeen, and seven in Stirling. (Bain, Aberdeen Guilds, 26–30.)

[2] Goudy and Smith, Local Gov., 32; Colston, Guildry, 18; Hill, Merchants' House, 31.

STATUTA GILDE[1].

HIC INCIPIUNT STATUTA GILDE APUD BERWICUM FACTA.

In nomine Domini Dei et indiuidue Trinitatis et beate Marie Virginis et omnium sanctorum, Hec sunt Gilde burgensium statuta per dispositionem domini Roberti de Bernhame militis tunc maioris de Berwico, Symonis Maunsel et aliorum predicti Burgi proborum virorum primo et principaliter constituta, Vt per multa corpora in vno loco congregata sequatur et vnica voluntas et vna eorumdem in relacione vnius ad alterum firma et sincera dilectio, ne particulariter aliqui Burgensium nostrorum congregati in aliquo [loco] generalis Gilde libertatem uel statuta possint elidere aut noua consilia contra Gildam hanc possint concipere in futurum.

I.

PROHIBICIO NE ALIQUA ALIA GILDA PROCURETUR.

Statuimus ut omnes particulares Gilde hactenus in Burgo nostro habite abrogentur et catalla eis rationabiliter et de jure debita huic Gilde exhibeantur. Et nullus amodo aliquam aliam ab ista in Burgo nostro presumat procurare. Set habito omnium membrorum ad vnum capud vno respectu vnum inde in bonis actibus proueniat consilium, vna societas firma et amicitia verissima.

II.

DE FORISFACTIS SPECTANTIBUS AD GILDAM.

Statuimus quod omnia forisfacta excedentia octo solidos nisi fuerint de tollonio Regis, juri uel libertati communi prepositorum spectantia, huic Gilde exhibeantur.

[1] These Statutes are here reprinted from Innes, Ancient Laws and Customs, 64–88. I have made some slight changes in the punctuation.

III.

QUOD FRATRES GILDE LEGENT ALIQUID AD GILDAM.

Statuimus etiam ut fratres huius Gilde in dispositione testamentorum tertio loco secundum quod eis libuerit de parte eos tangente huic Gilde delegent nisi ex necgligencia fuerit omissum ita quod aliquid legent.

IV.

DE ILLO QUI NON EST CONFRATER GILDE.

Item si quis non fuerit confrater huius Gilde et in extremis suis aliquid de bonis suis eidem Gilde delegauerit recipimus eum in confraternitatem nostram et ad debita sua perquirenda et in aliis necessitatibus suis ac si esset confrater predicte Gilde eidem concilium nostrum et auxilium concedimus.

V.

DE DELICTO CONFRATRIS GILDE CONTRA CONFRATREM.

Item Statuimus insuper quod si quis confratrum nostrorum verbotenus deliquerit, ad Gildam nostram adeundo uel morando ibidem seu inde redeundo, erga confratrem suum, primo, secundo, et tercio emendacionem faciat Gilde in xl. denariis.

VI.

ORDINACIO QUALITER TRANSGRESSOR PUNIATUR.

Item si quarto deliquerit verbo uel facto, condempnetur et puniatur secundum arbitrium Aldirmanni, Ferthingmannorum, Decani et aliorum confratrum Gilde et secundum decretum eorumdem satisfaciat leso.

VII.

ALIA ORDINACIO DE TRANSGRESSORIBUS.

Item si quis confratrum nostrorum pugno alium percusserit emendet Gilde in dimidia marca et secundum arbitrium Aldirmanni [Decani et] aliorum confratrum satisfaciat leso. Et si quis con-

fratrum ab alio sanguinem extraxerit violenter emendet Gilde in xx. solidis, et secundum arbitrium Aldirmanni [Decani] et ceterorum confratrum leso satisfaciat secundum delicti quantitatem; nec debet aliquid de emendis istis prece alicui relaxari.

VIII.

INHIBICIO CONTRA CONTUMELIOSUM.

Statuimus insuper quod nullus contumeliosus audeat uel presumat infra limina Gilde nostre cultellum cum puncto portare, quod si fecerit emendet Gilde in xij. denariis.

IX.

DE SANGUINE EXTRACTO.

Item si quis baculo aut armo ferreo ab alio sanguinem violenter extraxerit aut aliquod membrum mutilauerit secundum arbitrium Aldirmanni condempnetur.

X.

DE FORISFACTO PERTINENTE AD LUMEN GILDE.

Item si quis minxerit super calciamenta sua in vili modo aut super parietes domus Gilde nostre durante Gilda nostra emendet in quatuor denariis ad lumen Gilde.

XI.

ORDINACIO CONFRATRIS GILDE.

Statuimus etiam ut nemo recipiatur in confraternitatem nostram huius Gilde nostre minus quam xl. solidis exceptis vero filiis et filiabus burgensium et confratrum Gilde nostre.

XII.

DE CONFRATRE IN DECREPITA ETATE VEL MORBO.

Item si quis confratrum nostrorum Gilde nostre in decrepitam etatem uel paupertatem aut morbum incurabilem inciderit et de proprio non habuerit vnde possit sustineri, secundum disposicionem Aldirmanni et aliorum confratrum releuetur secundum facultates Gilde nostre.

XIII.

DE FILIA CONFRATRIS GILDE.

Item si quis confratrum nostrorum Gilde post obitum suum relinquat filiam suam ex eius vxore coniugata que sit laudabilis conuersationis et bone fame et non habens de proprio vnde sibi prouideri poterit de viro vel de domo Religionis si caste viuere voluerit, secundum dispositionem Aldirmanni et aliorum proborum secundum facultates Gilde de viro vel de domo Religionis sibi prouideatur.

XIV.

ORDINACIO SUPER EXEQUIAS FRATRIS GILDE IN PAUPERTATE.

Item si confrater Gilde nostre moriatur et non habuerit de proprio unde exequias suas poterit celebrare confratres Gilde nostre de facultatibus eiusdem Gilde corpus defuncti honorabiliter faciant humari. Et si qui de confratribus Gilde in villa existentes ad humacionem confratris sui non venient sint in forisfacto vnius bolle ordeacei brasei.

XV.

DE CONFRATRE CALUMPNIATO QUOMODO VICINI CUM EO LABORABUNT.

Item si quis confratrum nostrorum aut plures extra burgum de vita et membris fuerint calumpniati uel vexati probi viri duo vel tres de Gilda laborabunt cum eo duas dietas recedendo super expensas Gilde; si vero vltra duas dietas cum ipso laborauerint reus tunc propriis expensis suis eos cum ipso adducet et reducet. Similiter si necesse fuerit vlterius super expensis rei cum eo laborabunt, Si per aliquem super aliquo facto iniuste vexatus fuerit. Si vero iuste vexatus reus adducet super propriis expensis confratres et secundum arbitrium Aldirmanni, etc. condempnabitur.

XVI.

DE VICINO NOLENTE LABORARE CUM VICINO.

Item statuimus quod si quis confratrum nostrorum hanc confraternitatem nostram contumaciter neglexerit nullus de confratribus

nostris ei consilium uel auxilium verbo vel facto infra Burgum uel extra ministrabit. Et si etiam super vita et membris placitatus fuerit uel in aliquo honorem terrenum tangente vexatus fuerit non ei succurremus.

XVII.

ORDINACIO QUALITER VICINI AGGREGARI DEBENT.

Statuimus etiam ut quocienscumque Aldirmannus et Ferthingmanni et ceteri probi congregare voluerint confratres ad negocia Gilde tractanda omnes confratres Gilde conveniant indilate audita campana super forisfactum xij. denariorum.

XVIII.

CONSTITUTIO DE LEPROSIS.

Statuimus quod nullus leprosus ingrediatur limina portarum Burgi nostri, et si quis casualiter ingressus fuerit per scruientes Burgi nostri statim eiciatur. Et si contra hanc prohibicionem nostram aliquis leprosus portas Burgi nostri consuetudinarie ingredi presumpserit, indumenta sua quibus indutus est capiantur et comburantur, et nudus eiciatur, quia de communi consilio prouisum ut eis colligantur elemosine ad eorum sustentacionem in loco competenti extra Burgum nostrum; et hoc dico de leprosis alienigensis.

XIX.

ORDINACIO NE FIMUM PONATUR IN FORO NEC IN COMMUNI VIA.

Statuimus ut nullus presumat uel audeat apponere fimum uel aliquod puluerulentum uel cineres in via communi uel in foro uel super ripam de Twede in dampnum et lesionem circumtransientium. Et si quis hoc fecerit condampnetur in octo solidis ad forisfactum.

XX.

ORDINACIO LOQUENDI IN CURIA.

Statuimus quod in placitis nostris nullus loqui audeat de hoc quod tangat causam nisi tantummodo actor et reus aut corum aduocati, Et tantummodo Balliui qui tenent curiam, et hoc ad inquisitionem

cause vtriusque partis. Set tam actor quam reus ad consilium suum vnumquemque indifferenter poterit cuocare. Et si quis contra hanc prohibicionem nostram venire presumpserit condempnetur in octo solidis.

XXI.

DE BURGENSI CARENTE EQUO.

Statuimus insuper ut quicumque Burgensis habuerit in catalla x. libras habeat in stabulo suo equum decentem ad minus de valore xl. solidorum. Et si quis ab equo suo aliquo casu priuatus fuerit, morte, vendicione, donacione, uel quocunque alio modo, equum perquirat infra xl. dies; sin autem condempnetur in octo solidis ad Gildam.

XXII.

ORDINACIO DE MOLIS MANUALIBUS.

Statuimus quod nullus frumentum, mastilionem uel ciliginem ad molas manuales molere presumat nisi magna tempestate cogente uel penuria molendinorum hoc faciente, et si quis in tali casu moluerit ad molas manuales dabit pro multura xiij. vas. Et si quis hanc prohibicionem nostram contraire presumpserit a molis manualibus priuetur imperpetuum et braseum suum molet ad molendina ad xxiiij. vas.

XXIII.

DE LIBERTATE CONFRATRIS GILDE.

Statuimus ut nullus emat coria, lanam aut pelles lanutas ad reuendendum aut pannos scindat nisi fuerit confrater Gilde nostre uel extraneus mercator ad sustentacionem officii sui, et non habebit loth neque cauil cum confratre nostro.

XXIV.

ORDINACIO DE SUTORE TANNATORE.

Statuimus ut nullus sutor debet tannare aliqua coria nisi quorum cornua et aures fuerint eiusdem longitudinis equalis. Et nullus tannator debet salsare aliqua coria.

XXV.

DE ALIENA PECUNIA NON MERCANDA.

Statuimus ut si quis confrater noster accipiat denarios alicuius mercatoris alienigene ad negociandum et de hiis super forum certum lucrum capiat de sacco lane uel lasta coriorum aut de pellibus uel aliis mercimoniis, condempnetur primo et secundo in xl. solidis. Et si tertio super hoc conuictus fuerit amittet Gildam in perpetuum; Nisi Aldirmannus et confratres Gilde sibi gratiam concedere voluerint.

XXVI.

ORDINACIO SUPER EMPCIONE ALLECIUM ET PISCIUM.

Item statuimus quod nullus emat allec [nec] pisces aliquos qui per nauim deferuntur ad villam antequam nauis iaceat super siccam terram et remus foris mittatur; Nec aliqua alia mercimonia scilicet de blado, fabis, pisis, uel sale. Et si quis conuictus fuerit super hoc dabit vnum dolium vini ad Gildam pro forisfacto, aut per vnum annum et diem a villa euacuetur.

XXVII.

ORDINACIO QUOD NULLUS NEGET VICINO SUO PARTEM DE HIIS SUBSCRIPTIS.

Item si quis emerit allec, sal, bladum, fabas, aut pisas ad naues uel aliquod de consimilibus mercimoniis non negabit vicino suo partem quantum voluerit emere ad cibum suum ad sustentacionem domus sue pro foro quod [i.e. quo] ille emerit. Sin autem condempnabitur in suo plenario forisfacto vnius dolii vini ad Gildam. Et similiter qui emerit plus quam ad cibum suum et vendiderit eadem pena puniatur quia dixit se tantum ad cibum suum emere et super hoc partem petierit et optinuerit. Et quod quarta pars tocius rei empte semper remaneat emptori. Et quod soluat infra bordam cum optinuerit rem emptam.

XXVIII.

CONSTITUCIO DE ARRIS DATIS MERCATORI.

Item si quis emerit allec uel alia predicta mercimonia et dederit denarium dei uel aliquod argentum in arris, pacabit mercatori a quo

predicta emerat secundum forum prius factum sine felling uel herlebreking; et si non fecerit et in hoc conuictus fuerit dabit vnum dolium vini ad Gildam, aut a villa per annum et diem euacuetur.

XXIX.

CONSTITUCIO DE MERCATURA BONA SUPER ET DETERIORA SUBQUAM.

Item statutum est si contigerit quod emptor alicuius rei viderit aliquod mercimonium quod bonum sit supra et deterius subquam, emendare debeat venditor rei per visum et consideracionem proborum hominum ad hoc assignatorum.

XXX.

[DE CARNIFICIBUS.]

Item statutum est quod nullus carnifex donec voluerit officium exercere emat lanam aut coria nisi velit abiurare suam securim et quod manum suam bestiis non apponat.

XXXI.

QUOMODO BROCCARII ELIGI DEBENT.

Statuimus quod Broccarii sint electi per visum communitatis ville Berwici qui dabunt singulis annis vnum dolium vini communitati ville predicte ad festum sancti Michaelis sine vlteriori dilacione. Et nomina eorum per commune consilium inbreuientur.

XXXII.

CONSTITUCIO DE REGRATARIIS QUOD NON EMANT ANTE CERTAM HORAM.

Statuimus etiam quod nullus regratarius emat pisces, fenum, auenas, caseum uel aliquod aliud quod ad Burgum differatur vendendum ante pulsacionem campane in berfredo. Et si quis vero contra hanc prohibicionem nostram venire presumpserit, res empta capiatur et secundum considerationem Balliuorum nostrorum pauperibus ville erogetur.

XXXIII.

CONSTITUCIO DE MERCIMONIIS EMENDIS.

Statuimus insuper quod nullus emat aliqua mercimonia que ad Burgum differantur ad vendendum super pontem de Twede neque in Briggate neque extra portas ville antequam ad forum Burgi perueniat. Et si quis super hoc conuictus fuerit rem emptam amittet et commodum illius ad Gildam nostram vertatur.

XXXIV.

CONSTITUCIO FACTA DE LANA ET CORIO VENIENTIBUS AD VILLAM.

Item statuimus quod nulla mulier virum habens emat lanam in vico, nec aliquis burgensis habeat tantummodo vnum garcionem ad lanam uel coria emenda. Et si quis irrationabiliter emat lanam uel coria vltra statutum mercatorium in deteriorationem communitatis ville, dicta lana vel coria capiantur et ad commodum Gilde vertantur, et dictus homo uel garcio sit in forisfacto viij. solidorum.

XXXV.

CONSTITUCIO QUOD NULLUS PROCURET FORINSECUM PRO EO PLACITARE CONTRA VICINUM SUUM.

Item ordinamus et stricte percipimus quod nullus comburgensis noster procuret aliquem forinsecum extra libertatem nostram manentem ad placitandum pro ipso contra aliquem vicinum suum super plenariam forisfacturam vnius dolii vini sine fauore vel prece leuandi.

XXXVI.

CONSTITUCIO FACTA DE CONSPIRATORIBUS.

Item statuimus si aliquis faciat conspirationem aliquam retro communitatem ad eam separandam vel spergendam et super hoc conuictus fuerit dabit vnum dolium vini ad forisfactum.

XXXVII.

CONSTITUCIO FACTA DE GUBERNACIONE COMMUNITATIS BERWICI.

Statuimus insuper per commune consilium quod communia de Berwico gubernentur per xxiiij. probos homines de melioribus et discretioribus ac fidedignioribus eiusdem Burgi ad hoc electos vna cum maiori et quatuor prepositis. Et quandocunque predicti xxiiij. homines fuerint citati ad commune negocium tangendum, qui non venerit ad citacionem sibi factam ultra noctem dabit duos solidos ad Gildam.

XXXVIII.

CONSTITUCIO DE ELECTIONE MAIORIS ET PREPOSITORUM.

Item statuimus quod maior et prepositi eligentur per visum et consideracionem tocius communitatis. Et si aliqua controuersia fuerit in electione maioris uel prepositorum fiat tunc electio eorum per sacramenta xxiiij. proborum hominum predicti Burgi electorum ad eligendum vnam personam ad dictam communitatem regendam.

XXXIX.

DE CONSILIO OSTENSO CONTRA SACRAMENTUM.

Statuimus insuper si aliquis Burgensis contra sacramentum suum prestitum consilium uel secreta Gilde nostre ostendere presumpserit prima vice secundum considerationem Aldirmanni et aliorum fidedignorum Gilde nostre puniatur. Si vero secunda vice in tali casu deliquerit libertatem Burgi nostri per annum et diem amittet. Et si tercia vice super talia conuictus fuerit libertatem Burgi amittet pro termino vite sue. Et sciendum est vltra quod infra illud Burgum nec in aliquo alio infra regnum amplius libertatem gaudere de iure non poterit, quia infamis reputatur.

XL.

CONSTITUCIO FACTA DE CYROTECARIIS ET PELLIPARIIS DE PELLIBUS LANUTIS.

Item statuimus quod nullus pelliparius aut cyrotecarius aut aliquis alius Burgensis faciat lanam de aliquibus pellibus a festo Pentecostis

vsque ad festum Sancti Michaelis set vendat pelles quales fuerint secundum quod melius poterit. Et si aliquis pelliparius uel cyrotecarius super contrarium conuictus fuerit ab officio suo per vnum annum et diem depriuetur. Et si aliquis Burgensis contrarium fecerit et super hoc conuictus fuerit quociens esset dabit vnum dolium vini ad Gildam.

XLI.

CONSTITUCIO FACTA DE ALLECIBUS ET DE MODO EMPCIONIS EORUMDEM.

Item statuimus ut quicunque Burgensis emerit allec omnes vicini sui quicunque presentes fuerint ad empcionem dictorum allecium habebunt pro eodem precio quo ipse emit sine aliqua fraude. Et si quis voluerit partem habere qui ad empcionem dictorum allecium presens non fuerat dabit emptori ad lucrum xij. denarios. Et si quis conuictus fuerit de contrario dabit vnum dolium vini ad Gildam. Et si quis non satisfecerit venditori dictorum allecium de solucione pecunie sibi debite et super hoc conuictus fuerit, similiter ipse dabit vnum dolium vini ad Gildam. Et hoc intelligendum est de confratribus Gilde et non de aliis.

XLII.

A.D. MCCLXXXI.

CONSTITUCIO FACTA DE TRACTAGIO VINI.

Item statutum fuit die Mercurii proxima ante festum sancti Marci Anno domini m°cc° iiij^{xx} primo quod quilibet Burgensis dabit plenum tractagium pro quolibet dolio vini quod ponit in tabernam et quod ponit in nauem et extra. Pro dolio remouendo de vno sellario ad alterum dabit duos denarios et obolum, videlicet vnum denarium ville et denarium et obolum pro Beriuagio. Et pro uno dolio ad potum suum dabit denarium pro Beriuagio.

XLIII.

DE AUENIS VENIENTIBUS BURGO VENDENDIS.

Item statutum fuit in Ecclesia sancti Nicholai in crastino sancti Cuthberti proximo sequente anno supradicto quod nulla mulier emat in foro auenas ad faciendum braseum ad vendendum plusquam vnam

celdram. Et si plus emerit amittet quantum emerit. Et sciendum est quod tercia pars remanere debet Balliuis Burgi et residuum ad Gildam.

XLIV.

A.D. MCCLXXXIII.

CONSTITUCIO FACTA DE CARNIFICIBUS ANIMALIA EMENTIBUS.

Item statutum fuit die Mercurii in vigilia apostolorum Symonis et Jude Anno MCCLXXXIII. quod nullus carnifex a festo sancti Martini vsque ad Natale debet ire extra villam ad obuiandum bestiis venientibus ad villam vendendis nec aliquo die infra dictum tempus bestias emere in foro ante prandium nec in fraude procurabit sibi bestias vsque post prandium teneri. Et si quis vero contrarium fecerit ab officio suo per annum et diem exponatur.

XLV.

CONSTITUCIO DE CORIO TANNATO.

Item statuimus quod nullus extraneus ferens coria tannata ad vendendum vendat ea infra domum set in foro communi et hoc tantum per diem fori statutum. Et licet coria fuerint cesa in frustra dabit tolloneum.

XLVI.

CONSTITUCIO DE MOLIS MANUALIBUS.

Item nullus habeat nisi duo paria molarum et qui plura habuerint a molis suis per vnum annum et diem priuentur.

XLVII.

A.D. MCCLXXXIV.

CONSTITUCIO DE CONGREGACIONE COMMUNITATIS PRO COMMUNI NEGOCIO.

Item ordinatum fuit die Sabbati proximo post festum sancte Trinitatis anno Domini m°cc° octogesimo quarto quod quandocunque Aldirmannus et Ferthingmanni propter commune negocium tractandum voluerint confratres Gilde congregari, campana per vices pulsata

in berfredo scilicet primo, secundo, et tercio, debet per interualla pulsari. Et quicunque confrater Gilde hoc audierit et ad locum congregationis possit accedere et noluerit uenire antequam a pulsacione cessatur, sit in misericordia xij. denariorum.

XLVIII.

CONSTITUCIO DE LOTH ET CAUYL.

Item die Jouis proximo ante festum beati Mathei apostoli Anno domini m°cc°iiij^{xx} iiij^{to} ordinatum fuit quod nullus confrater Gilde nostre debet habere lotte neque cauyl cum alio in minori quam dimidio quarterio pellium et dimidia dacra coriorum et in duabus petris lane.

XLIX.

A.D. MCCXCIV.

DE EMPCIONE FABARUM ET PISARUM VEL SIMILIUM AD NAUES.

Prima curia tenta die Jouis ante festum Penthecostes anno Domini m°cc° nonogesimo quarto in aula fratrum ordinis sancte Trinitatis statutum et ordinatum per vnanimem concensum et assensum expressum et voluntarium omnium fratrum Gilde quod nullus emat aliquod genus bladi, fabarum, pisarum, salis, carbonum, seu cetera venalia apud Berwicum venientia per mare nisi sit ante bordam nauis videlicet *at the Rade bra*, nec portet dicta bona empta de naue ante ortum solis set ab ortu vsque ad declinacionem solis fiat portagium sine requie. Et si quis huius rei contrarium fecerit et super hoc conuictus fuerit dabit vnum dolium vini fratribus Gilde.

L.

DE AMERCIAMENTIS LEUANDIS CONFRATRIBUS GILDE.

Item ordinatum fuit eodem die per assensum et consensum omnium fratrum Gilde in aula predicta in crastino sancti Mathei anno supradicto, Quod omnia merciamenta capta ab extraneis mercatoribus pertinere debent fratribus Gilde et Burgensibus ville exceptis illis que pertinent ad dominum Regem que sibi de iure sunt reseruata.

LI.

CONSTITUCIO FACTA DE BURGENSE FORISHABITANTE.

Item codem die ordinatum est ex assensu et consensu predictorum confratrum Gilde quod nullus Burgensis vel confrater Gilde nostre forishabitans audeat nec presumat aliqua mercimonia ad Gildam nostram pertinentia infra Burgum nostrum emere vel vendere nisi tantum in die fori. Et quod nullus forishabitans emat aliqua victualia ad Burgum nostrum per naues venientia ad tabernanda nisi tantum ad sustentacionem domus sue. Et si quis contrarium fecerit et super hoc conuictus fuerit dabit vnum dolium vini ad Gildam nostram.

APPENDIX E.

The Affiliation of Medieval Boroughs[1].

Modern society is pre-eminently distinguished from that of the middle ages by a less intense and less pervasive spirit of association. The weakness of central authority, the imperfect administration of justice, rendered amalgamation of interests imperative. 'Were I alone, in no society, then woe me!' sang the Dutch poet of the fourteenth century—

'Mi es goet gheselscap bi,
Waer ic allene, soo wee mi[2].'

Men were more to each other or less to each other than they are to-day, according as they were constituent parts of the same or different fraternal aggregations. Nor were these aggregations confined to a given place or community; members of various communities, the different communities themselves[3], formed combinations. Social isolation, in the middle ages, when it does appear, is often more apparent than real. The knight in his solitary castle was but one of a larger fraternity; the mendicant monk on his lonely pilgrimages greeted many a brother monk; the towns, isolated from the rest of the world by lofty walls and almost impassable roads, were united by a tie closer and more organic than any that binds together such communities in our age of rapid transit and great commercial activity. This peculiar affiliation of medieval towns as it existed on the Continent has been incidentally dwelt upon by various writers, but the English phase of it has never yet been investigated.

[1] This paper appeared in the Antiquary, 1885, vol. xi. I now reprint it with many additions.

[2] Van der Lore cited by De Vigne, Recherches sur les Gildes, Introd., p. ix.

[3] For example, Pappenheim (Schutzgilden, 184) describes a federation of eighteen Danish gilds which held general synods at Skanör in the thirteenth century.

§ 1. *Great Britain.*

When the ancient mark became surcharged with inhabitants, the newly-married sons, bidding farewell to the old home, went forth into the forest, appropriated a portion of the virgin soil strewn in profusion about them, and reared for themselves new habitations [1]. Even in recent times Russian peasants have resorted to a very similar expedient [2]. In both cases the new village maintained a close connection with the older community, adopting its institutions, appealing to it for counsel and support. The affiliation of English boroughs in the twelfth, thirteenth, and fourteenth centuries was similar to this, but with one important difference,—the mother town was generally a parent by adoption, and not by birth. When a prosperous village or a newly-founded town wished to secure the franchises of a free borough [3], or when a borough sought an extension of its liberties, it was natural for the community to look for a model among its more privileged and flourishing neighbours. The innate tendency of the human mind to turn to account the experiences of others would have been a sufficient motive for such action; but the need of a reliable precedent of this kind was especially felt in an age when even the magistrates of most towns were unskilled in law, and when king and baron were ever ready to nullify chartered rights, the one by a quibbling 'quo warranto,' the other by evasions and encroachments. Among the boroughs that

[1] The newly-founded villages often remained dependent upon the mother community. For the whole subject, see Von Maurer, Einleit., 175–181, and Gesch. der Markenverf., 19–22, 362, 363.

[2] Systems of Land Tenure (Cobden Club), 355; Cunningham, English Commerce, 52. In North America, likewise, offshoots of the colonial towns were formed by emigration. For example, Newark, New Jersey, was founded by emigrants chiefly from New Haven in 1666 (Levermore, New Haven, 113–120). 'The most ancient townpolity of New Haven touched the soil of New Jersey, and imparted to the city of Newark the first currents of its municipal life' (ibid., 120).

[3] In the agreement between the City of London and the Lords of Council, 1609, it is stated that the towns founded in Ulster shall have such liberties as shall be thought fit on view of the charters of London, the Cinque Ports, Newcastle, and Dublin. (Cox, Hibernia, ii. 16.) When the English conquered Ireland and Wales, most of the municipalities were remodelled, Bristol and Hereford respectively being the chief exemplars. See below, p. 257. In 24 Edward I a writ 'de civibus eligendis pro quadam nova villa ordinanda' was issued to twenty-three of the principal boroughs of England. Each of them was to elect two citizens, 'qui melius sciant quandam novam villam disponere et ordinare,' who were to meet the king at Bury St. Edmunds. (Addit. MS., Mus. Brit., 4530, ff. 4–6.) See also Merewether and Stephens, 415.

could be thus chosen as models, there was great diversity of custom and law; for as yet there were very few acts of parliament applicable to all boroughs, and no municipal 'corpus juris' of England like the 'leges burgorum' of Scotland.

The townsmen having selected a borough as an exemplar offered a fine to their lord in return for a grant of its privileges. Thus, in 1199, Gloucester gave the king two hundred marks that it might have the liberties of Winchester; in 1204 Derby offered sixty marks for a charter like that of Nottingham[1]. If the petitioners found a favourable hearing, they received a charter containing some such clause as the following:—'Sciatis nos concessisse . . . burgensibus nostris de Derby omnes illas liberas consuetudines quas burgenses nostri de Nottingham habent,' etc.[2] In this particular case the customs ('consuetudines'), or at least the more important ones, are specified in the charter; but they are frequently omitted. Sometimes they are enumerated without any intimation that they are those of another town. For example, the charter of 1199, for which the burgesses of Gloucester paid the fine referred to above, is in great part an exact transcript of the charter of Richard I to Winchester, though it does not mention this city[3]. Thus the phenomenon of affiliation will often explain certain remarkable resemblances existing between charters of different boroughs[4]. A town could have two or more models at the same time, or could change from one to another[5]. Now and then we meet with a general grant of 'the liberties of any borough,' or 'the liberties that a free borough ought to have[6],' by which was doubtless meant a vague aggregate of privileges common to most free boroughs[7]. Not infrequently a

[1] Rot. de Oblatis, 17, 223. For other examples, see ibid., 99, 111; Madox, Exch., i. 398; and below, p. 245, n. 1. John Gray, Bishop of Norwich, selected an exemplar for his town of Lynn:—'Quia Dominus Rex nobis per cartam suam concessit ut elegerimus Burgum in Anglia quemcumque vellemus, ut easdem Libertates quas Burgus ille habet, haberet etiam villa nostra de Lenn', et nos eligimus Oxenfordiam.' (Mackerell, King's Lynn, 248; Parkin, King's L., 118.)

[2] A.D. 1204. Rot. Chart., 138.

[3] Ibid., 56; Stubbs, Charters, 265.

[4] Examples will be found in Surtees, Durham, i. 297; Brand, Newc., ii. 130; Foedera, i. 63, 76; Oliver, Exeter, 279; Gribble, Barnstaple, 374; Rot. Chart., 56, 219; Stubbs, Charters, 265; Seyer, Charters of Bristol, 5, 6; Acta Parl. Scot., i. 86, 87 [76, 77].

[5] Plac. de quo War., 384.

[6] 'Omnes illas libertates et liberas consuetudines quas aliquis liber burgus Anglie habet.' (Charter to Stafford, 7 John, in Addit. MS., Mus. Brit., 6, 711, fol. 72.) See also Rot. Chart., 157; Picton, Memorials, i. 10; Munic. Corp. Com. 1835, p. 823; Merew. and Stephens, 413.

[7] Cf. above, pp. 5, 6.

daughter town itself became an exemplar for others, these in turn serving as precedents for a fourth group. Sometimes only particular institutions or customs of the mother town were granted, as, for example, her markets, fairs, gilds, or courts, etc. Illustrations of all these peculiarities will be found in the following table, which, however incomplete it may be, will reveal at a glance that burghal affiliation was a familiar and characteristic feature of English municipalities in the middle ages[1]:—

Borough.	Mother Town.	Date.	Authorities.
Aberdeen	Perth	1222	Kennedy, Aberdeen, i. 11; Acta Parl. Scot., i. [77] 87.
Aberystwith	Montgomery	1277	Placita de q. W., 817.
Abingdon	Banbury Higham Ferrers	2–3 P. & M.	Brady, Treatise (ed. 1777), 51.
Agarslee	*Stafford	51 Edw. III	Petyt MS., i. 259.
Alnwick	Newcastle-upon-Tyne	Hen. II	Tate, Alnw., i. 96, ii. App.
Altrincham	Macclesfield	1290	Leycester, Antiq., 203.
Andover	*Winchester *Wilton *Salisbury	Hen. II	Above, p. 9; vol. ii. p. 3.
Appleby	York	Hen. II	Plac. de q. W., 792; Rot. Chart., 41.
Arbroath	*Brechin	1725	Misc., 279, 280; Rec. of Conv., v. 374.
Athboy	*Dublin	1407	Merew. and Stephens, 810; Cal. of Pat. and Close Rolls, ii. 453.
Athenry	*Trim	1574	Munic. Corp. Com., Irel., p. 287.
Athlone	Wexford *Dublin	1606	Ibid., 125.
Bala	Carnarvon	1324	Rec. of Caern., 174.
Banagher	Cariesfort	1628	Cal. of Pat. and Close Rolls, iii. 364.
Bandon Bridge	Armagh	1613	Liber Munerum, 8.
Banff	Aberdeen	1372	Munic. Corp. Com., Scotl. 1835, p. 99.
Barnard Castle	Richmond	[Stephen]	Spearman, 51; Surtees, iv. 71.

[1] The dates in the third column refer to the earliest charter or other source known to the writer in which the affiliation is mentioned. The asterisk indicates that not all, but only particular, customs or institutions of the mother town are granted.

Borough.	Mother Town.	Date.	Authorities.
Barnstaple	London	Hen. II	Gribble, Barnst., 371, 374.
Bath	London	1256	Falconer, Charters, 3, 4.
	Winchester	1189	Vol. ii. p. 351.
Beaumaris	*Hereford	1296	Rec. of Caern., 160.
Bedford	London	19 Rich. II	Schedule of Records, 9–15.
	Oxford	1189	Plac. de q. W., 17[1].
Beverley	*York	1119–35	Vol. ii. pp. 21–22.
	*London	[Edw. I]	Liber Cust., 131.
Bideford	Bristol	John	Watkins, Bidef., 12.
Bossiney	Launceston	Hen. III	Willis, Notitia, ii. 542.
Boston	*Winchester	Hen. VIII	Rec. Office, Conf. Roll 3 Eliz., m. 27.
Bradninch	Exeter	10 John	Rep. Rec. Com. 1837, p. 434.
Brecknock	Hereford	4 Edw. I	Lewis, Wales, i. 100.
Bristol	London	1256	Seyer, Charters, 23, 37; vol. ii. p. 354.
Builth	Hereford	1278	Vol. ii. p. 356.
Burford[2]	*Oxford	1087–1107	Vol. ii. pp. 28, 29; Fisher, Burf., 5.
Burford[3]	Bristol / Hereford	[1265]	Eyton, Shrop., iv. 318.
Burntisland	Dunfermline	1583	Rec. of Conv., i. 165.
Caergwrle[4]	Flint / Rhuddlan	1351	Munic. Corp. Com. 1880, p. 755.
Caerwys	Conway / Rhuddlan	1290	Ibid. 1835, p. 2609; vol. ii. p. 357.
Cambridge	Gloucester	1200	Rot. de Oblat., 99.
Canterbury	*London	Hen. II	Merew. and Stephens, 335.
Cardiff	Hereford	——	Duncumb, Heref., i. 338.
Cardigan	Carmarthen	1284	Plac. de q. W., 820; Ayloffe, Cal., 94.
	Newborough	1388	Merew. and Stephens, 778.
	*Bristol	1249	Vol. ii. p. 359.
Cariesfort	Jamestown	1628	Cal. of Pat. and Close Rolls, iii. 422.
Carlisle	*Newcastle-upon-Tyne	11 Hen. IV	Petyt MS., ii. 50, 51.

[1] 'Burgenses de Bedford reddunt compotum de xl. marcis, pro carta Regis habenda, ut sint in libertate Burgensium de Oxineford.' (Madox, Exch., i. 398, 13 Hen. II.) See also Munic. Corp. Com. 1835, p. 2103.

[2] Oxfordshire.

[3] Salop.

[4] I. e. Hope.

Borough.	Mother Town.	Date.	Authorities.
Carmarthen	Hereford	-	Duncumb, Heref., i. 329.
	*London	1764	Munic. Corp. Com. 1835, p. 203.
Carnarvon	*Hereford	1284	Rec. of Caern., 185.
Carrickfergus	*Sligo	1622	Liber Munerum, 3.
	Drogheda	1568	Ibid., 2; Munic. Corp. Com., Irel., 745.
Cashel	Bristol	1216	Ibid., 461.
	Clonmel	1378	Chartae Hibern., 75.
Chester	London, Bristol	1303	Baines, Lanc. and Chesh., i. 645.
Chesterfield	Nottingham	1213	Rot. Chart., 195.
Clitheroe	Chester	[1147].	Harland, Mamec., 187.
Clonmel	*Kilkenny, *Wexford, *Ross, *Youghal	1372	Munic. Corp. Com., Irel., 479; Chartae Hib., 66.
Conway	*Hereford	1284	Rec. of Caern., 164.
Cork	Bristol	Hen. II	Cusack, Cork, 158.
	*Dublin	1609	Munic. Corp. Com., Irel., 28.
	*London	1318	Chartae Hib., 50; Liber Mun., 7.
Coventry	Lincoln	Hen. II	Dugdale, Warwick., 137.
Criccieth	*Hereford	1284	Rec. of Caern., 197; Lewis, Wales, i. 267.
Denbigh	*Rhuddlan	1379	Williams, Denb., 119.
	Hereford	——	Duncumb, Heref., i. 336.
Derby	Nottingham	1204	Rot. Chart., 138[1].
Devizes	Marlborough	Edw. III	Waylen, Devizes, 158.
	Oxford, Winchester	45 Edw. III	Lansdowne MSS., 230, fol. 3.
Dinglecushe	Drogheda	1585	Cal. of Pat. and Close Rolls, ii. 105.
Dingwall	Inverness	1227	Constit. of Burghs, 99; New Stat. Account, xiv. 219; Munic. Corp. Com., Scotl., 1835, p. 189.
Drogheda	Dublin	1229	Gilbert, Doc., 94; Chartae Hib., 20, 63.
Drokedale	Bristol	5 Rich. I	Rec. Office, Pat. Roll 14 Edw. III, p. 2, m. 26.

[1] Cf. Madox, Exch., i. 407; Rot. de Obl., 223.

Borough.	Mother Town.	Date.	Authorities.
Dublin	Bristol	1171	Chartae Hib., 1[1].
Dumbarton	Edinburgh	1221	Glasgow Arch. Soc., Trans., i. 339; Sets, 45; Misc., 203.
Dundalk	*Dublin	1379	Munic. Corp. Com., Irel., 891; Cal. of Pat. and Close Rolls, iii. 185.
Dundee	Berwick	1327	Charters of Dundee, 10.
	Melrose	1817	Rep. of Committee of Dundee, 1, 3.
Dungarvan	Bristol	1215	Rot. Chart., 211.
	*Dublin	1610	Munic. Corp. Com., Irel., 63, 64; Liber Mun., 40.
Dunstable	London	Hen. I	Dunno's Originals, Pt. v. 6–8; Monast. Anglic., vi. 239.
Durham	Newcastle-upon-Tyne	Hen. II	Hutchinson, Durham, ii. 2.
Ellesmere	Bristol	Hen. III	Owen and Blakeway, i. 89.
Exeter	London	Hen. II	Oliver, Exeter, 279; Liber Cust., 667.
Faversham	Sandwich	37 Hen. VIII	Rec. Office, Conf. Roll, 1 Edw. VI, p. 4, m. 7.
Fethard	Kilkenny	1553	Munic. Corp. Com., Irel., 501.
Flint	Rhuddlan	1278	Rot. Parl., i. 1[2].
Folkestone	*Dover	Stephen	Boys, Sandw., 816.
Francheville	Wilton, Alresford	1285	Petyt MS., i. 223; Munic.Corp.Com., 1835, p. 793.
	Farnham, Taunton		
Galway	Drogheda	1395	Liber Munerum, 17.
	*Bristol	1484	
	Waterford	20 Eliz.	Munic. Corp. Com., Irel., 317, 318[3].

[1] 'Henricus rex Anglie . . . salutem. Sciatis me dedisse et concessisse et presenti carta confirmasse hominibus meis de Bristowa civitatem de Duvelina ad inhabitandam. Quare volo et firmiter precipio ut ipsi eam inhabitent et teneant illam de me et de heredibus meis bene et in pace, libere et quiete, integre et plenarie et honorifice cum omnibus libertatibus et liberis consuetudinibus quas homines de Bristowa habent apud Bristowam et per totam terram meam. Teste,' etc. (Chartae Hiberniae, 1.) Cf. ibid., 12; Gilbert, Doc., 54; Hunt, Bristol, 23, 24; vol. ii. pp. 59, 370. In 1363 Dublin was also granted all the liberties of Waterford, Cork, and Drogheda (Chartae Hib., 61).

[2] 'Item Burgenses ejusdem loci habent easdem libertates quas habent Burgenses Rodelan.' (Rot. Parl. i., 1.)

[3] Cf. Hardiman, Galway, App., xviii., xxvi.

Borough.	Mother Town.	Date.	Authorities.
Gateshead	Newcastle-upon-Tyne	Hen. II	Boldon Buke, App. p. xl.
Gloucester	London; Winchester	1194	Madox, Firma B., 134; Rot. de Obl., 17.
Gowran	*Kilkenny	1414	Hist. and Arch. Assoc. of Irel., Journal, 1871, i. 539.
Grimsby	Northampton	1201	Rot. Chart., 91.
Guildford	Winchester	1366	Vol. ii. p. 375; Hist. of Guildf., p. i.
Harlech	*Hereford	1284	Rec. of Caern., 193.
Hartlepool	Newcastle-upon-Tyne	1201	Rot. Chart., 86; Sharp, Hartl., 85.
Haverfordwest	Hereford	——	Duncumb, Heref., i. 337.
	Cardigan	1290	Merew. and Stephens, 568[1].
Hedon	York; Lincoln	1200	Rot. Chart., 81; Petyt MS., i. 336.
Helston	Launceston	1201	Rot. Chart., 93.
Hereford	Bristol	[1265]	Munic. Corp. Com., 1835, p. 2858; cf. Eyton, Shrop., iv. 318; Owen and Blakeway, i. 89.
Higham Ferrers	Banbury	2–3 P. & M.	Bohun, Debates, 158.
Hull	*Scarborough	26–27 Edw. I	Madox, Exch., i. 423.
Ilchester	Winchester	1204	Rot. Chart., 130[2].
Inistioge	Cashel	1608	Munic. Corp. Com., Irel., 522.
Jamestown	Newborough	19 Jac. I	Ibid., 1093–94.
Johnstown, St.	Jamestown	1627	Cal. of Pat. and Close Rolls, iii. 250.
Kells	Bristol	Rich. I	Munic. Corp. Com., Irel., 1813.
Kildare	*Drogheda; *Dundalk	1515	Merew. and Stephens, 1142.
Kilkenny	*Gloucester	1383	Chartae Hib., 82.
	*Dublin / *Waterford	1609	Munic. Corp. Com., Irel., 534, 535.

[1] Cf. Archaeologia Camb., Oct. 1878, p. xxxvii.

[2] 'Confirmavimus eis et heredibus suis inperpetuum quod habeant omnes libertates, quietantias et liberas consuetudines quas predicti cives nostri Wintonie habent . . . [et] quod si alicubi arestati fuerint vel vexati contra libertates Wintonie, deducantur et judicentur per cartam predictorum civium Wintonie.' (Rot. Chart., 130.)

[3] 'Sciatis presentes et futuri quod ego Walterus de Lacy dedi et concessi et hac presenti Carta mea confirmavi Burgensibus meis de Kenlis legem Bristolli habendam illis et eorum heredibus, sicut melius et liberius alicubi data et concessa est aliquibus Civibus secundum continenciam racionabilem legis Bristolli ei prima institucione concesse,' etc. (Chartae Hib., 10.)

Borough.	Mother Town.	Date.	Authorities.
Kilmaclenyn	Bristol	1251	Caulfield, Rot. Clon., 17.
Kilmallock	*Kilkenny *Clonmel	1584	Cal. of Pat. and Close Rolls, ii. 85.
Kilmeadan	Bristol	Hen. III	Cal. Doc., Irel., 1292, No. 1179.
Kingston-upon-Thames	*Guildford	1256	Vol. ii. p. 91.
Kinsale	Cork	1334	Munic. Corp. Com., Irel., 75.
	Youghal	1587	Liber Munerum, 7[1].
Kirkby Johannis	Skynburgh	33 Edw. I	Petyt MS., i. 242–245.
Lampeter	Cardigan	Edw. III	Bristol Council-House, Little Red Book, fol. 204.
Lancaster	Bristol	[1188]	Harland, Mam., 195; Plac. de q. W., 384[2].
	London	1199	Harland, Mam., 197.
	Northampton	1199	Rot. Chart., 26.
Laugharne	Carmarthen	[1300]	Spurrell, Carm., 23[3].
Leeds	Pontefract	1208	Whitaker, Leeds, 7; Wardell, App. iv.
Leighlin, Old	Bristol	[1201]	Ryan, Carlow, 59.
Lichfield	*Bristol	10 Hen. III	Abbrev. Plac., 102.
Lidford	*Exeter	1086	Below, p. 259.
Limerick	Dublin	1199	Chartae Hib., 36; Munic. Corp. Com., Irel., 344.
	*Bristol	1292	Ibid., 345; vol. ii. p. 59.
Lincoln	London	1194	Foedera, i. 52[4].
Liskeard	Launceston Helston	1240	Vol. ii. p. 108; Allen, Lisk., 537.
Llanfyllin	Hereford	Edw. II	Powysland Club, iii. 92.
Llantrissaint	Cardiff	1346	Archaeol. Journal, xxix. 351.
Londonderry	*Youghal	1621	Colby, Londond., 41; Liber Mun., 27.
	*Dublin	1684	Colby, 47; Liber Mun., 27.
Longford	*Banagher *Hillsborough *Lanesborough	9 Car. II	Munic. Corp. Com., Irel., 1247.

[1] See also Cal. of Pat. and Close Rolls, ii. 180.

[2] 'Johannes Comes Moretonii omnibus francis et anglicis salutem. Sciatis me concessisse et hac presenti carta mea confirmasse Burgensibus meis Lancastrie omnes libertates quas Burgensibus Bristollie concessi,' etc. (Addit. MS., Mus. Brit., 4531, fol. 82.)

[3] See also Archael. Camb., ix. 100; Munic. Corp. Com., 1835, p. 287.

[4] See also Rot. Chart., 5; Maitland, Sel. Pleas, 39.

Borough.	Mother Town.	Date.	Authorities.
Ludlow	*Bristol	1461	Petyt MS., ii. 181.
Lydd	Hastings	Hen. II	Munic. Corp. Com., 1835, p. 1013.
Lyme Regis	Melcombe Regis London	1284	Hutchins, Dorset, ii. 41.
Lynn	Oxford	1204	Rot. Chart., 138.
	Norwich	Edw. II	Year Book, Edw. II, fol. 103.
Maidstone	Canterbury	1548	Merew. and Stephens, 1163–64.
Manchester	Salford		Thompson, Essay, 189.
Marlborough	Winchester *Boston *Oxford	1204	Rot. Chart., 135.
Maryborough	*Dundalk	1592	Cal. of Pat. and Close Rolls, ii. 222.
Melcombe Regis	London	1280	Hutchins, Dorset, ii. 449; Rep. MSS. Com., 1876, p. 575.
Minehead	*London	1 Eliz.	Merew. and Stephens, 1229.
Montgomery	Hereford	1227	Eyton, Shrop., xi. 134.
Montrose	Perth	David I	Munic. Corp. Com., Scotl., 1836, p. 237.
Naas	*Drogheda *Dundalk	1596	Cal. of Pat. and Close Rolls, ii. 371, 372.
Neath	Cardiff	1359	Francis, Neath Charters, 3.
Netherwere	Hereford Bristol	7 Edw. I	Petyt MS., ii. 241–2 [1].
Nevin	Newborough	Edw. III	Munic. Corp. Com., 1837–38, p. 99.
Newborough	*Rhuddlan	1303	Rec. of Caern., 178; Ryley, Plac., 405.
Newcastle-upon-Tyne	Winchester	1216	Vol. ii. p. 183; Rot. Chart., 219.
Newton [2]	London	14 Edw. I	Petyt MS., i. 225.
Newtown [3]	Hereford	[Hen. VI]	Powysland Club, xii. 101–102.
Northampton	London	1189	Hartshorne, North., 25, 26; Rot. Chart., 45.
Norwich	London	Hen. I	Thompson, Essay, 114; Foedera, i. 63; Blomefield, iii. 23, 129–131; Merew. and Stephens, 389.

[1] Cf. Cal. Rot. Pat., 267; Rec. Office, Pat. Roll 6 Hen. V, m. 20.

[2] Dorset.

[3] Montgomery.

Borough.	Mother Town.	Date.	Authorities.
Nottingham	*Coventry	1 Hen. IV	Munic. Corp. Com., 1835, p. 1986.
Oswestry	Shrewsbury	Rich. I	Eyton, Shrop., x. 325; Madox, Firma B., 250.
Overton	*Rhuddlan	21 Edw. I	Madox, Firma B., 39.
Oxford	London	Hen. II	Stubbs, Charters, 167; Liber Cust., 672; vol. ii. p. 386.
Paisley	Dunfermline Newburgh Arbroath	1488	Munic. Corp. Com., Scotl., 1836, Pt. ii. p. 168.
Petersfield	Winchester	[Hen. II]	Vol. ii. 387; Case of P., 202; Merew. and Stephens, 308.
Plymouth	Oxford	1440	Jewitt, Plym., 250; Rec. Office, Conf. Roll 2 Hen. VII, p. 1, m. 20; Devon Assoc., xvi. 744.
Plympton	Exeter	1241	Brady, Treatise, 46; Cotton, Plympton, 4.
Pontefract	Grimsby	1194	Boothroyd, Pontef., App. i.
	Stamford	2 Rich. III	Rep. MSS. Com., 1881, p. 271.
Poole	Southampton	1433	Patent Roll, 1 Edw. IV, p. 3, m. 20; Merew. and Stephens, 1239–42; Sydenham, 161; Hutchins, i. 72, 73.
Portsmouth	Winchester Oxford	1194	Rot. Chart., 77; Foedera, i. 63; Liber Cust., 655.
Preston	*London	1635	Abram, Memor., 41, 42; Dobson and Harl., 96.
	Newcastle-under-Lyme	Hen. II	Vol. ii. p. 194[1].
Pwllheli	Newborough	1355	Munic. Corp. Com., 1837–8, pp. 115, 116.
Rathcoole	Bristol	Hen. III	Chartae Hib., 33; Gale, Inquiry, App. p. x.
Rathmore	Bristol	[? Hen. III]	Gale, Inquiry, App. p. xx.
Ravenspurne	Scarborough	26–27 Edw. I	Madox, Exch., i. 423.
Redcliff	Bristol	1164	Hunt, Bristol, 39; Nicholls and Taylor, i. 91.

[1] See also Madox, Exch., i. 398; Dobson and Harland, 7.

Borough.	Mother Town.	Date.	Authorities.
Rhuddlan	Bristol Hereford	1086	Domesday, i. 269; Record of Caern., 179; below, p. 258.
Romney	Hastings	1205	Rot. Chart., 154.
Rosbercon	Kilkenny	1300	Chartae Hib., 39.
Ross, New	Kilkenny Banna Wexford	1389	Chartae Hib., 84–86.
	Waterford	1414	Munic. Corp. Com., Irel., 559.
Ruthin	Tenby	1507	Merew. and Stephens, 1086.
Ruyton	Bristol Shrewsbury	1309	Munic. Corp. Com., 1835, p. 2858.
Rye	*Hastings	1191	Foedera, i. 53.
St. Alban's	*London	16 Car. II	Rec. Office, Pat. Roll, 16 Car. II, p. 20, no. 6.
Salisbury	Winchester	1200	Rot. Chart., 54; Antiq. Sarisb., 78.
Scarborough	York	Hen. II	Hinderwell, Scarb., 156; Rot. Chart., 40; Baker, Scarb., 28; vol. ii. p. 388.
Seaford	Hastings	1543	Merew. and Stephens, 1132.
Shrewsbury	London	1199	Ibid., 387, 388.
	Bristol	1205	Rot. Chart., 142.
Sligo	Youghal	1621	Liber Munerum, 35.
Sodbury	Bristol	Hen. II	Atkyns, Gloucestershire, 347.
Southampton	Winchester	40 Hen. III	Munic. Corp. Com., 1835, p. 871.
Stirling	*Edinburgh *Perth	1641	Munic. Corp. Com., Scotl., 1836, p. 403.
Stockton	Newcastle-upon-Tyne	17 Edw. III	Hutchinson, Durham, iii. 127.
Stratford	*Bristol	Rich. I	Dugdale, Warw., 680[1].
Swords	Dublin	1196	Chartae Hib., 9; Munic. Corp. Com., Irel., 259.
Tamworth	*London	3 Eliz.	Munic. Corp. Com., 1835, p. 2039.
Taunton	London Winchester	Stephen	Addit. MS., Mus. Brit., 29436, fol. 17.
Thomastown	Kilkenny	1 Mary	Munic. Corp. Com., Irel., 573.
Totnes	Exeter	1086	Below, pp. 259, 264.

[1] Cf. Munic. Corp. Com., 1835, p. 2858.

Borough.	Mother Town.	Date.	Authorities.
Trim	Bristol	Rich. I	Munic. Corp. Com., Irel., 265; Chartae Hib., 10.
Wallingford	Winchester	Hen. II	Foedera, i. 471.
Waterford	*Bristol	1205	Munic. Corp. Com., Irel., 579–580; Chartae Hib., 13, 22.
Wearmouth[1]	Newcastle-upon-Tyne	[Hen. II]	Vol. ii. p. 388; Boldon Buke, App. xli; Surtees, Durham, i. 255, 297.
	*Westminster	31 Hen. III	Fordyce, Durh., ii. 397.
Welshpool	Hereford	[Edw. I]	Vol. ii. p. 389; Powysl. Club, i. 303–307.
Westchep	Pontefract	1255–8	Yorks. Top. and Arch. Journal, i. 170, 171.
Weymouth	Southampton Portsmouth	1252	Hutchins, Dorset, ii. 466.
Whitby	Ripon Beverley	1351	Cartul. de W., ii. 424, 428.
Wilton	*London *Winchester	Hen. I	Vol. ii. pp. 251, 390; Archaeol. Assoc., Journal, xvii. 311; Rot. Chart., 125; Munic. Corp. Com., 1835, p. 1399.
Winchester	*London	[Edw. I]	Liber Cust., 130.
	*Salisbury *Coventry	1430	Vol. ii. p. 261.
Winchelsea	*Hastings	1191	Foedera, i. 53.
Woodstock	Windsor	1453	Marshall, Woodstock, 129.
Yarmouth	*Oxford	1208	Rot. Chart., 175.
Youghal	*Waterford *Clonmel	1609	Munic. Corp. Com., Irel., 106.
	*Dungarvan	1559	Liber Munerum, 8[2].

[1] I. e. Sunderland.
[2] See also Cal. of Pat. and Close Rolls, ii. 99.

Re-arranging this table, we can see at a glance which were the favourite parent boroughs.

- LONDON
  - Barnstaple
  - Bath
  - Bedford
  - Beverley
    - Whitby
  - Bristol
  - Canterbury
    - Maidstone
  - Carmarthen
  - Chester
    - Clitheroe
  - Cork
  - Dunstable
  - Exeter
    - Bradninch
    - Lidford
    - Plympton
    - Totnes
  - Gloucester
  - Lancaster
  - Lincoln
    - Coventry
      - Nottingham
        - Chesterfield
        - Derby
      - Hedon
  - Lyme Regis
  - Melcombe Regis
  - Minehead
  - Newton
  - Northampton
    - Grimsby
      - Pontefract
        - Leeds
        - Westchep
    - Lancaster
  - Norwich
    - Lynn
  - Oxford
  - Preston
  - St. Alban's
  - Shrewsbury
    - Oswestry
    - Ruyton
  - Tamworth
  - Taunton
  - Wilton
    - Francheville
  - Winchester
- OXFORD
  - Bedford
  - Burford
  - Devizes
  - Lynn
  - Marlborough
  - Plymouth
  - Portsmouth
  - Yarmouth
- YORK
  - Appleby
  - Beverley
    - Whitby
  - Hedon
  - Scarborough
    - Hull
    - Ravenspurne

- WINCHESTER
  - Andover
  - Bath
  - Boston
  - Devizes
  - Gloucester
    - Cambridge
  - Guildford
    - Kingston-upon-Thames
  - Ilchester
  - Marlborough
    - Devizes
  - Newcastle-upon-Tyne
  - Petersfield
  - Portsmouth
    - Weymouth
  - Salisbury
  - Southampton
    - Poole
    - Weymouth
  - Taunton
    - Francheville
  - Wallingford
  - Wilton
    - Francheville

- HASTINGS
  - Lydd
  - Romney
  - Rye
  - Seaford
  - Winchelsea

- DUBLIN
  - Athboy
  - Athlone
  - Cork
    - Kinsale
  - Drogheda
    - Carrickfergus
    - Dinglecushe
    - Galway
    - Naas
  - Dundalk
    - Kildare
    - Maryborough
    - Naas
  - Dungarvan
    - Youghal
  - Kilkenny
  - Limerick
  - Londonderry
  - Swords

- KILKENNY
  - Clonmel
    - Cashel
      - Inistioge
    - Youghal
  - Fethard
  - Gowran
  - Kilmallock
  - New Ross
  - Rosbercon
  - Thomastown

RHUDDLAN . . . { Caergwrle; Caerwys; Denbigh; Flint; Newborough { Cardigan { Lampeter; Nevin; Overton { Pwllheli

BRISTOL . . . { Bideford; Burford; Cardigan; Cashel { Inistioge; Chester { Clitheroe; Cork; Drokedale; Dublin; Dungarvan; Ellesmere; Galway; Hereford; Kells; Kilmaclenyn; Kilmeadan; Lancaster; Leighlin, Old; Lichfield; Limerick; Ludlow; Netherwere; Rathcoole; Rathmore; Redcliff; Rhuddlan; Ruyton; Shrewsbury { Oswestry; Ruyton; Sodbury; Stratford; Trim { Athenry; Waterford { Kilkenny; New Ross { Clonmel { Cashel; Kilmallock; Youghal { Kinsale; Londonderry; Sligo { Carrickfergus

IRELAND

NEWCASTLE . . . . { Alnwick; Carlisle; Durham; Gateshead; Hartlepool; Stockton; Wearmouth

SCOTLAND

HEREFORD
- Beaumaris
- Brecknock
- Builth
- Burford
- Cardiff
  - Llantrissaint
  - Neath
- Carmarthen
  - Cardigan
    - Lampeter
    - Laugharne
- Carnarvon
  - Bala
- Conway
  - Caerwys
- Criccieth
- Denbigh
- Harlech
- Haverfordwest
- Llanfyllin
- Montgomery
  - Aberystwith
- Netherwere
- Newtown
- Rhuddlan
- Welshpool

WALES

Thus England may be divided into regions, each having a municipal centre, from which law and liberty radiated in all directions,—a division that constitutes the basis for a more natural and organic classification of medieval boroughs than any now in vogue. We must not, however, picture to ourselves a monotonous uniformity of constitution in the towns of a given region. They did not merge their identity in that of the parent community so as to become mere duplicates of the same. The framework of their constitution, and especially criteria in legal procedure, were borrowed from the parent town; but local peculiarities—certain immemorial usages and later accretions to the mother stock—gave to each borough an individuality of its own.

It is evident from the preceding tables that Bristol was the chief mother town of Ireland; and Hereford, of Wales. Newcastle was one of the principal sources of Scotch burghal law[1]. I have not found

[1] Acta Parl. Scot., i. 39–42, 722, 723; Archaeologia Aeliana, iii. 109; Innes, Anc. Laws, 168–172, and Mid. Ages, 172. Cf. below, p. 263. Winchester is also casually referred to as an exemplar in a law of William the Lion. The burgesses of Scotland were to 'be deraigned by the law of Winchester'; and no amerciaments were to be imposed upon them except according to the custom of Winchester. (Acta Parl. Scot., i. 720 [356]; cf. ibid., i. 35 [41].) But these privileges were probably copied from Newcastle's charter. See vol. ii. p. 183.

much material illustrative of affiliation in Scotland. It probably did not prevail there to such an extent as in England. Scotland had less need of it; for the large towns all used the same burghal code of laws (the 'leges burgorum'), and resorted to the same appellate tribunal—the court of 'the Four Burghs[1].' The Cinque Ports also form a group by themselves. The constitutions of the boroughs composing this federation were quite homogeneous[2]. They were all subjected to the same court of appeal (at Shepway, afterwards at Dover[3]). An 'unincorporated member' was under the jurisdiction of its 'head-port[4].'

Burghal affiliation was evidently known to the Anglo-Saxons; for in Domesday Book we find certain towns taking others as their prototype. Rhuddlan had received the laws and customs of Hereford and Bristol[5]. Exeter 'gelded' when London, York, and Win-

[1] Acta Parl. Scot., i. 107, xii. 267; Munic. Corp. Com., Scotl., 1835, p. 15; Innes, Anc. Laws, p. xl., Middle Ages, 170, and Legal Antiq., 114; Acta Domin. Concilii, 19, 20, 24; Burton, Scotl., ii. 90; above, p. 200. The following fragment of ancient Scotch laws (undated) shows what were the functions of the Court or Parliament of the Four Burghs. 'Gif ony party uill fals a dome [i. e. gainsay a judgment] he aucht to say thus: This dome is fals, stynkand and rottin in the self, and tharto I streik a borch [i. e. procure a surety], and that I will preiff. And tharto he sall haue a day in to the courte before the justice in other placis outtane [i. e. except] in borowis, for it is to wit that all domes falsit or aganeseid in burrow courte salbe determinyt and declarit in Hadingtoune, throw foure burges vsaste and sufficiandest of ilk ane of thire burrowis, Berwik, Roxburgh, Edinburgh, Striueling, befor the chamerlane withoutyne delay.' (Innes, Anc. Laws, 185; Acta Parl. Scot., i. [378], 742; cf. ibid., xii. 530.) In 1292, in a Parliament at Edinburgh, pleas were tried before the Wardens of Scotland. On motion of both parties in a suit it was determined that the Four Burghs should be consulted ('consulendum est cum quatuor Burgis'), regarding the legal point at issue. In due time the answer of the Four Burghs was received, and judgment was pronounced accordingly: 'Et quia compertum est per recordum et veredictum quatuor Burgorum quod lex et consuetudo talis est; ideo consideratum est,' etc. (Rot. Parl., i. 107, 108.) See also Rec. of Conv., ii. 482–484. In 1454 Edinburgh was made the seat of the Parliament or Court of the Four Burghs 'ad subeundum, ordinandum et finaliter determinandum de et super judiciis burgorum universalium regni nostri curiis dictis sive contradictis,' etc. (Munic. Corp. Com., Scotl., 1835, p. 16.) In 1468 Edinburgh decided a legal question for Aberdeen. See Extracts from Ed. Records, 1403–1528, p. 24. For an appeal of Lanark to Edinburgh, see Innes, Anc. Laws, 169, 170; Acta Parl. Scot., i. [359], 723.

[2] Lyon, Dover, ii. 267, *et seq.*

[3] Burrows, Cinque Ports, 73, 185; Holloway, Rye, 119; Lyon, Dover, i. 246.

[4] Munic. Corp. Com., 1835, p. 924. Their 'causes were always tried at the Head-Port' (Burrows, 241). Pevensey, a corporate member of Hastings, was in scot and lot with the latter in the reign of Edward II (Ryley, Placita, 414).

[5] 'Ipsis burgensibus annuerunt leges et consuetudines quae sunt in Hereford et in Bretuill', scilicet,' etc. (Domesday, i. 269).

chester 'gelded.' Totnes, Lidford, and Barnstaple regulated their military service according to the custom of Exeter[1]. It is indeed possible that municipal affiliation was an inheritance from the ancient mark system.

The way is now cleared for a more interesting portion of our inquiry, the determination of the exact relationship of the towns to each other after they had become thus affiliated. Did the new tie involve mutual obligations, and bring about more intimate intercourse between them? Until active interest is manifested in the printing and exploiting of town records, the complete solution of such questions of internal polity will be encompassed by almost insurmountable difficulties. Still a number of passages, gleaned from widely divergent sources, enable us to throw no inconsiderable light upon the question before us.

The first step taken by a borough, after receiving the liberties of another community—in case these were not fully enumerated in the grant—was to send to the latter for an exemplification of its charter. Thus Wilton and Norwich obtained such exemplifications from London[2]; Lancaster and Grimsby from Northampton[3]; Preston from Newcastle-under-Lyme[4]; Newborough from Rhuddlan[5]; Cork from Bristol[6]; and Limerick from Dublin[7].

If difficulties afterwards arose as to the interpretation of any of the franchises thus exemplified, if a legal problem presented itself which the local magistrates could not solve, they would send messengers to the authorities of the mother town for a declaration of what was law and custom there. The archives of Hereford furnish us with the following interesting account of such proceedings:—

'At a courte holden for the cittie of Hereford, on the first Wednesdaie after the ffeast of the Epiphany, in the first yeare of the raigne of king Henrye the Second, the men of the towne of Drusselan [? Rhuddlan] in the Welsh partes, brought the kings writte, directed to the kings bayliffs of Hereford, wherein it was conteyned that the king, by his charter, graunted the said towne of Drusselan in fee-farme

[1] Domesday, i. 100. Totnes gelded only when Exeter gelded (ibid., i. 108 b).

[2] Munic. Corp. Com., 1835, p. 1399; Thompson, Essay, 131.

[3] Simpson, Lanc., 268; Munic. Corp. Com., 1835, p. 2249.

[4] Dobson and Harland, Preston Guild, 79.

[5] Munic. Corp. Com., 1835, p. 2810.

[6] 'Carta Regis Johannis' granting Cork all the laws of Bristol.—'Exemplar, ut videtur, consuetudinum veterum et legum Brist' in Civitate Cork' obtinentium.' (Harl. MS., Mus. Brit., 741, fol. 9 b.)

[7] Liber Munerum, 24. In some of these cases the exemplifications may have been secured from the king.

to the men thereof, to hould to them and theire heires, by the same lawes and customes as the cittizens of the cittie of Hereford doe hould; and that they should enquire of theire lawes and customes from the men aforesaid; soe that as when and as often as the said lawes and customes should bee required, they should bee delivered without delay, and under the common seale of the cittie, in case of disherison, otherwise not. Whereupon the said bailiffs warned six of the Kings ffee, three of the Bishops ffee, two of the Dean and Chapters fee, and one of the master of the hospitalls ffee, to appeare on the morrowe to certifie them of their lawes and customes under the penaltie in the writte conteyned; who came on the morrowe, with many others of the cittie with them. . . . And they declared the lawes and customes which they have heard from theire auncestors, and were approved and used in their tyme, to bee as followeth.'

Quite a complete outline of the town constitution is then presented by the twelve jurymen.

'John le Gaunter, chief bayliffe of our soveraigne lord the king having called unto him twelve of the discreet men of the citty, delivered unto the burgesses of the towne of Kermerdine [Carmarthen] the customes underwritten, for which he had one hundred shillings to the use of the commonalty; (to wit) concerning the state of their tenements,' etc.

After various laws relating to tenements we have this entry:—

'Robert Durewarde, capitall bayliffe, having called unto him twelve cittizens, sent by waye of certificate to the men of Hareford [Haverford-west] upon theire petition and for an hundred shillings, which the said men have given, certain customes, in these words: To all bayliffs, burgesses, and other the men of the towne of Hareford, unto whom these present letters shall come, Robert Durewarde and his fellow bailiffs of the kings cittie of Hereford wish health. Upon a certaine petition of yours sent unto us and our fellow cittizens, wherein you desire that we would certifie you, for certaine causes, of some of our customes, for the bettering of your state and tranquillitie; We, conceiving your petition and supplication just, and that it doth so behove us, in these and the like cases, do certifie you and every of you, by these presents, that . . . [Customs concerning foreign merchants in Hereford and concerning suits for the recovery of debts follow.] In witness whereof the common seal of the office, being in the custody of our capital bayliffe, is affixed.'

'John of Gaunt, capitall bayliffe of Hereford, calling unto him twelve cittizens, required from them certaine customes to be observed

duringe his tyme, and which, in former tymes, were there used and approved of, which they should send and certifie to the men of Kerdiffe [Cardiff] at that time requiringe those customes; and for other townes which stood in need of them, when they should require those customes from him. And those twelve, with the advice and consent of theire discreete fellow citizens, unto the customes required of them did declare: That although the kings cittizens of Hereford who have the custodye of his citty, (in regard that it is the principall cittye of all the market-townes from the sea even unto the boundes of the Seaverne), ought of ancient usage to deliver their lawes and customes to such townes when need requires, yet in this case they are in noe wise bound to do it, because they say they are not of the same condition; for there are some townes which hould of our Lord the Kinge of England and his heires without any mesne Lord; and to such we are bound when and as often as need shall be, to certifie of our lawes and customes, chiefly because we hold by one and the same tenure; and nothing shall be taken of them in the name of a reward, except only by our common towne-clerke, for the writinge and his paynes, as they can agree. But there are other markett-townes which hold of diverse lords of the kingdome, wherein are both natives and rusticks of auncient tyme, who paie to theire lords corporall services of diverse kinds, with other services which are not used among us, and who may be expelled out of those townes by theire lords, and may not inhabit in them, or be restored to their former state, but by the common law of England. And chiefly those, and others that hold by such forreine services in such townes, are not of our condition; neither shall they have our lawes or customes but by way of purchase, to be performed to our capitall bayliff as they can agree between them, at the pleasure and to the benefitt of the citty aforesaid. And such persons shall not have our common seale without a greate reward, or upon the speciall supplication of our fellow cittizens. As touching the customes now required of us, we say,' etc.

Laws regarding debtors, fines for trespasses, the quarterly courts, etc., follow [1].

In like manner, as we learn from other sources, Hereford sent

[1] The original, of which this is a translation, is lost. For this and other transcripts, see Duncumb, Heref., i. 317–344; Archaeol. Assoc., Journal, xxvii. 460–488; Johnson, Customs of Heref., 9–46. The various parts of the document probably belong to the period of the three Edwards. See above, p. 13.

certificates explanatory of its laws to Rhuddlan[1], Montgomery, Denbigh[2], and Netherwere[3]. The ancient book in which the customs given to Drusselan, Haverford, Carmarthen, and Cardiff were recorded, was evidently regarded with no little awe and reverence by the burghers of Hereford. Every new mayor was sworn upon it, every incoming freeman kissed it. This practice of formally setting forth the customs of a borough and communicating the same to other towns, must have exerted a salutary influence upon municipal jurisprudence, shaping hazy oral tradition into tangible written law, giving birth, perhaps, to many a local 'corpus juris' like that of Hereford. The so-called charter of Henry I to Newcastle[4] and the Customal of Chester probably originated in this way. Both of them have much of the form and flavour of the Hereford record; both were communicated, on application, to affiliated towns, the Chester document to Clitheroe[5], that of Newcastle to Stockton. The following is an old translation of a portion of the certificate sent to Stockton (17 Edw. III):—

'To their dearly beloved friends in Christ, the Maior and Bailiff and other honest men of the town of Stockton, the Maior and Bailiffs of the town of Newcastle-upon-Tyne send greeting and desire of continuall love. Whereas our beloved and special friend William Browne, your neighbour and fellow Burgess, upon your behalf hath

[1] Consuetudines Herefordie: 'Majori et Ballivis libertatis ville de Rothelan ac omnibus aliis ad quos presentes Littere pervenerint, N. et Socii sui, Ballivi Civitatis Domini Regis Herefordie, pro se et consivibus suis salutem. Super quasdam Petitiones vestras Nobis et consivibus nostris per vos missas, in quibus continentur ut vos de aliquibus Consuetudinibus nostris ad melioracionem status vestri et tranquilitatis certis de causis cerciorari voluerimus, ac nos Petitiones vestras et Supplicaciones justas considerantes, ut in talibus et consimilibus tenemur, vobis et cuilibet vestrum per Presentes certificamus: . . . In cujus rei testimonium sigillum nostrum commune Presentibus est appensum.' 22 Edw. III. (Wotton, Leges, 517; Rec. of Caern., 130; Munic. Corp. Com., 1835, p. 2838.)

[2] Munic. Corp. Com., 1837–38, p. 85; Duncumb, Heref., i. 336.

[3] 'Et quod habeant legem et consuetudinem Herefordie, prout scriptum est dictis burgensibus de Netherwer ex communi assensu omnium Burgensium ville predicte Hereford' sub eorum sigillis.' Charter of Edward [I] to the burgesses of Netherwere. (Rec. Office, Patent Roll, 6 Hen. V, mem. 20; cf. Petyt MS., ii. 241–242.)

[4] For some extracts from this document, see vol. ii. pp. 182, 183.

[5] Munic. Corp. Com., 1835, p. 1483; Harland, Mamec., iii. p. xv; Charters of Clitheroe, 27. This is probably only an English transcript of an older certificate given by Chester to other towns. At any rate, it is not the original of the Chester customal, as Harland seems to think. I have found the Latin document, of which the Clitheroe record is but an imperfect translation, in Harley MS. 2057, ff. 63–65. Cf. vol. ii. pp. 43, 44.

required us that upon certain articles and customes of our town aforesaid, the which amongst you in your town above remembered you claim to use and have, and which to you are not altogether well known, we would be careful to make you more certain . . . . the which aforesaid articles and customes do thus begin . . . . In testimonie whereof the seal of the Maioralty of our towne aforesaid to these presents to be fixed we have thought good,' etc.[1]

Newcastle also sent the following communications to the burgesses of Scotland:—

'Assisa tenta apud Novum Castrum determinavit quod cum aliquis burgensis fuerit in possessione alicuius terre sive iuste sive iniuste, et superveniat alius dicendo se verum esse heredem de illa terra, et evertet eum de dicta terra et extra possessionem propria auctoritate sua et sine iudicio. Queritur[2] utrum ipse qui prius fuit in possessione debet recuperare saisinam de deiectore antequam respondeat. Et responsio detur quod ipse qui prius fuit in possessione sive iuste sive iniuste semper primo debet recuperare saisinam et eam tenere vel amittere in forma iudicii. Et deiector erit in forisfactum domini regis[3].'

'Till thar der frendis the burrougreffis and burges of Aberden, Patrik Dey, Mar of the New Castall and the burges of that ilk toun greeting. Knawyn be it to yow that sic be the custum in our burgh of the New Castall that gif a burges gettis childer with his wif lauchfully and scho dee [i. e. she die], and that ilk burges spous ane other wif, and that burges dee, the tother wif sall duell in the principall wonnyng of hir husband xl. dais after the deid of hir husband, discendande of his fader and his eldfader. And gif that wonnyng in the whilk he deyt was of his conquest, he may gif that woning, as all his other landis throw him of conquest gottin, alswell till his wif as to ony other man[4].'

To show the wide prevalence of this practice of appealing to the parent community for information, a few more examples may be added. In the year 1360, and on various other occasions, Bristol sent an explication of certain customs to Dublin, in answer to

[1] Brewster, Stockton, 82–85; Hutchinson, Durham, iii. 127; Surtees, iii. 173.

[2] An ancient translation contains these words: 'Quharfor it is askit at us burges of þe New Castell,' etc. (Acta Parl. Scot., i. [40], 352.)

[3] 'Leges quatuor burgorum,' c. 99: Acta Parl. Scot., i. [40], 352; Innes, Anc. Laws, 48. Cf. Acta Parl. Scot., i. 722, 723 [358, 359]; Innes, 168.

[4] Innes, Anc. Laws, 170; Acta Parl. Scot., i. 723 [359]. Cf. ibid., 724 [360]; Innes, 172.

inquiries made by the magistrates of the latter[1]. The following passage taken from the Maire's Kalendar, p. 93 (fifteenth century), elucidates the filial relation of Bristol to London:—

'Forasmoche as at all tymes this worshipfull toune of Bristowe hath take a grete president of the noble Citee of Londone in excerciseing theire laudable customes, it is therfore requisite and necessarie vnto the hedde officers of the saide Towne of Bristow to know and vnderstonde the auncient vsages of the saide Citee of Londone. Whereof a grete parte foloweth hereaftir, wretin oute of a boke that was maister Henry Daarcy[2].' The Kalendar then gives the 'constitutiones civitatis Londonii' in detail (pp. 93–113).

In the reign of Edward III Thomas de Wynburne was arraigned in the borough of Totnes for selling a pound of candles by weight, the pound weighing one ounce less than the assize prescribed, seeing that the weight of a pound ought to be two marks by goldsmiths' weight. 'And because it is unknown as to the weight, therefore let inquiry be made how the citizens of Exeter sell; and the said Thomas has his day till the next court to hear his verdict[3].' Exeter's exemplar, on the other hand, was London. In the medieval records of Exeter were entered certain usages of London[4], probably received from the latter by certificate.

During the reign of Edward III Oxford obtained from London a letter certifying as to the mode of holding pleas of land in the Husting Court of London. It begins as follows:—

'As honurables hommes et sages et lours tres chersamys meire et Baillifs de la ville D'Oxenforde les meire et Audermans de la cite de loundres salut et treschero amysteo. Nous avoms entendu vos lettres a nos naidgaires [i.e. naguère] enuoiees contenauntes qe nous dussoms vous certefier dascune de nos usages come en vos dites lettres plus pleinement est contenu. Nous vous certefioms par cestes nos lettres q'a chescun husteng' des plees de terre tenu en la dite cite chescun Alderman par son Bedel de qint et qatre gardes retournera vn panel de xii. bones gentz somouns destre a mesme le husteng[5],' etc.

[1] Munic. Corp. Com., Dublin, 2, 3.

[2] Doarcy was mayor of London in 1337–1338. (Noorthouck, London, 890.) Cf. Maire's Kal., 6.

[3] Devon Assoc., vi. 106; Rep. MSS. Com., 1872, p. 344.

[4] Izacke, Exeter, 95.

[5] Archives of the City of London, Roll of Letters, temp. Edw. III, No. 198. For an abstract of the document, see Sharpe, Cal. of Letters, 90; Liber Albus, 181–184. The same collection of letters (No. 228) contains a similar response in reference to pleas of 'fresh force' and 'mort d'ancestor,' but the name of the town making the inquiry is not given.

It appears that the burgesses of Oxford frequently made similar inquiries of the magistrates of the city of London. There is a document in the latter's archives of which the following is an abstract: 'Littera missa Maiori et Aldre[mannis] Londonie per Maiorem et Ballivos Oxonie. –A treshonorables biers et sages le Maire et les Audermans de la Citee de Loundres . . . Purceo seignurs qe nos sumes en awher d'un jugement rendre en cas d'un testament . . . [as to whether a husband could devise lands jointly settled on husband and wife]; vos prioms sires et reqerroms humblement et deuoutement qe [vos] escriure voillez de ceo a nos certeyn iugement et vos auisementz pleynement . . . Ista littera fuit indorsata et remissa apud Oxoniam . . . Maior, Aldermanni et Vicecomites respondent quod[1],' etc.

The subjoined document (dated July, 1327) also illustrates the filial relationship existing between London and Oxford:—'Maior et Burgenses Oxonie miserunt Maiori et Ciuibus Londonie quosdam articulos subscriptos sub eorum communi sigillo petentes ab eisdem Maiore et Ciuibus qualiter articuli illi in eadem Ciuitate tempore retroacto secundum consuetudinem eiusdem Ciuitatis fuerunt vsitati . . . . [Seven questions and answers follow. Opposite an eighth question are the words 'non respondetur.' Three of these queries relate to the craft of bakers. The others relate to punishment in case a freeman refuses to answer the summons of the mayor; or refuses to pay tallage[2]; usage as to the demise of lands; procedure regarding recognizance of debts; legal measures taken if a foreigner impleaded by a citizen for debts should flee from the town. The following is the last paragraph of the record:] Et sciendum quod predictas questiones miserunt Maior et Burgenses Oxonie Maiori et Communitati Londonie, quia habent quendam punctum in carta sua de Libertatibus suis a Regibus eis concessis quod ipsi uti debent in dicta villa Oxonie eisdem Legibus que utuntur in Ciuitate Londonie; et quod si ipsi sint in dubio de aliquo puncto legum suarum quod ipsi Londoniam mittent, et ibidem certiorabuntur per Maiorem et Communitatem[3],' etc.

[1] Archives of the City of London, Pleas and Memoranda Rolls, A, rot. xvii. temp. Edw. III. A translation of the question and answer is given by Sharpe, Calendar of Wills, vi–vii.

[2] 'Ad quem articulum responsum est quod non est tallagium in Ciuitate, set si aliquis assessus fuerit ad aliquod auxilium faciendum et soluere noluerit, distringi debet per catalla sua.'

[3] Pleas and Memor. Rolls, A, rot. ii. Letter Book F, ff. 206, 209, throws some additional light upon the relations between London and Oxford. See also Madox, Firma Burgi, 260, 261.

Oxford, in turn, was appealed to, for an explanation of certain local usages, by the burgesses of Bedford. Various answers given under the corporate seal of Oxford, about the year 1560, are still preserved in the municipal archives of Bedford[1].

In the ancient burghal records of Melcombe Regis[2] and Barnstaple are entered certain usages of London, their parent community. The chartulary of Barnstaple, containing these customs of London, has this note: 'The customs of London having been granted to the burgesses of Barnstaple by several charters . . . it is presumed this charter from the city of London was obtained by the burgesses of Barnstaple to certify to them what the customs of London were[3].'

It is evident, from the preceding examples, that the muniments of boroughs formerly affiliated may frequently elucidate or supplement each other.

Thus a town was wont to transmit to others, bound to it by this peculiar tie, two different kinds of documents: on the one hand the exemplification of its charter or a transcript of its codex of general laws, on the other hand the certificate furnishing or interpretating particular laws and customs. The occasion giving rise to applications for the latter is known to us in only a very few cases. There can be little doubt, however, that they generally originated in the courts of the daughter town, being due to the magistrates' ignorance of the law regarding some particular custom, or to contentions caused by a difference of opinion among them as to what ought to be the judicial decision in a given case. This is evident from the Hereford responses, cited above, and especially from the language of certain town charters.

'Et habeant,' says the charter of Richard I to Bedford, 'omnes alias consuetudines per totam Angliam et libertates et leges suas quas habent communes cum civibus suis de Oxenfordia . . . et si dubitaverint vel contenderint de judicio aliquo quod facere debeant, mittant nuncios suos Oxenefordiam et quod de hoc Oxeford (*sic*) cives Oxefordie judicabunt, illud sine dubio firmum et ratum et certum habeant et faciant . . . . Quia ipsi et cives Oxefordie sunt de una et eadem consuetudine et lege et libertate[4].'

In almost the same words a charter of 6 John directs the burgesses of Lynn to appeal to those of Oxford, and one of

[1] Schedule of Bedford Records, 6; Hist. Soc., Trans., 1880, viii. 65.

[2] Moule, Cat. of Charters, 95.

[3] Chanter, Barnstaple Records, No. 36.

[4] Plac. de quo War., 17.

Henry II enjoins the latter in turn to appeal to the citizens of London[1].

But the mother town in England never became a court of appeal in the full, legal acceptation of the term. It was merely a higher court of consultation, with informatory rather than reformatory functions. Favourable circumstances would have easily converted it into the seat of full appellate jurisdiction, but the atmosphere of Britain was not congenial to such a growth.

§ 2. *The Continent.*

A comparison between the development of affiliation in England and that of the Continent affords much food for reflection. Everywhere in Western Europe we meet with the same phenomenon, town affiliated with town, the one endowed with the laws of the other and appealing to it for counsel. The affiliation is even more prevalent on the Continent than in England, the relationship more intimate, the intercourse more active. We are struck above all by the fact that many mother towns acquired full appellate powers.

In France the most prominent of these municipal centres were Bordeaux for Guienne, Rouen for the western provinces, Beauvais and Laon for the north, Beaumont for Lorraine and the north-east, Soissons for Picardy and Champagne, Amiens for Ponthieu, Lyon for Lyonais, and Lorris for Poitou, Orléanais, Berry, and Touraine. Lorris served as prototype for about three hundred towns, Beaumont for more than five hundred. The following is a more specific view of some of the scions of certain parent communities[2]:—

BEAUVAIS . . . . { Bray, Crépy, Meaux, Soissons { Compiègne, Dijon, Firme, Senlis, Sens }, Vesley, Villeneuve }

[1] Rot. Chart., 138; Stubbs, Charters, 167; vol. ii. p. 386.

[2] My general statements regarding affiliation in France, including the tabular view, are based on Warnkönig and Stein, Franz. Gesch., i. 266–267; Giry, Étab. de Rouen, i. pp. xxii, 54; Thierry, Lettres, 150, *et pass.*, and Tableau de l'anc. Fr. Munic., 247, 283, *et pass.*; Bonvalot, Le Tiers-État, 2, 156–252. See also Giry, St. Quentin, 16–27; Wauters, Libertés Communales, Preuves, 58, 62, 67, 119, 145, 175, 176, 217, *et pass.*; Prou, Les Coutumes de Lorris et leur Propagation; Rambaud, Civil. Franc., i. 248, 249; Luchaire, Instit. Monarch., ii. 138.

- ROUEN
  - Angoulême
  - La Rochelle
    - Bayonne
    - Oléron
      - Isle de Ré
    - Saintes
    - Tours
  - Poitiers
  - St. Jean D'Angély
  - Niort
    - Cognac
- LAON
  - Bryéres
  - Cerni
  - Crépy
  - Montdidier
  - Rheims
- BEAUMONT
  - Beaufort
  - Boncourt
  - Breux
  - Charny
  - Gembres
  - Fontenoy
  - Limes
  - Lunéville

I have intimated that the archives of one borough may supply the deficiencies of the other. France furnishes illustrations of this. For example, the copy of the old municipal laws ('établissements') at Rouen is incomplete, but the missing portions are to be found in transcripts still extant in the daughter towns Niort and Poitiers[1]. In like manner the archives of Eu and Ham supplement those of their parent town St. Quentin, and throw much light upon the early history of the latter[2]. Bonvalot calls the charter of Beaumont 'le complément indespensable de ses filiales, dont elle est le secours et la clé.' The 'charte fille' and a transcript of the 'charte mère' lay side by side in the common chest of most of the pendant towns[3].

In North France and Flanders the current expressions for the act of appealing to the parent community were 'to go to the chief or head,' 'to go for judgment,' etc. ('aller à chef, kief, hoofd'; 'aller à sens'; 'aller à kerke'; 'recursum habere ad caput'). St. Omer was the 'chef de sens' of Lannoy, Ardres, Fauquembergue, and Audruick; Bruges, of Dam, Ecluse, Ardenberg, etc. Other Flemish centres of affiliation were Arras, Furnes, Ghent, and Ypres[4].

In 1203 the Count of Boulogne granted the town of Boulogne a commune modelled after that of Tournai; the magistrates of the

[1] Giry, Établ., i. p. xxiii.
[2] Giry, St. Quentin, 27.
[3] Bonvalot, 253.
[4] Warnkönig, Fland., i. 382; Giry, St. Omer, 199. In 1303 Bruges was the 'hoofd' of twenty-seven towns. (Coutume de Bruges, 281.)

former being allowed to call on those of the latter in case of doubt regarding the proper judgment to be given in any plea:—

'. . . communiam juratam de Bolonia tenendam juravimus ad usus et consuetudines Tornaci, sicut eam tenendam nostri juraverunt antecessores, tali videlicet modo, quod aliquo casu emergente de quo jurati per se deffinire nescient et judicium dicere, apud Tornacum ire deberent, judicium inquisituri; et per inquisitionem quam de Tornaco retulerint, casum predictum diffinire debent et querelam illam terminare[1].'

In 1251 Henry III, duke of Brabant, granted Merchten a constitution similar to that of Louvain, with the privilege of appealing to the latter in suits difficult to decide:—

'. . . villam nostram, quae Mergthen dicitur, liberam fecimus, conferentes, sub virtute praestiti juramenti, eamdem libertatem per omnia, quam contulerunt praedecessores nostri opido Lovaniensi, et ad majorem hujus rei evidenciam et expressionem praesenti cartae nostrae inseri fecimus transcriptum cartae concessae a praedecessoribus nostris praefato opido Lovaniensi, super sua libertate, cujus forma talis est . . . . Volumus insuper ut quotiescumque in opido de Merchten emerserit aliqua dubietas super sentenciis aliquibus ferendis vel similibus, recursum habeant illi de Merchten ad opidum Lovaniense, tanquam ad caput suum, ut secundum sentenciam et consilium scabinorum Lovaniensium sententiae eorum ferantur, et dubietates omnes sive ambiguitates illorum sopiantur[2].'

In the year 1272 Count Arnoul de Guines declares, in his confirmation of the privileges of Audruick, that the burgesses should seek law and judgment at St. Omer:—

'Doivent avoir et tenir par auchun establissement, loy et esche-

[1] Wauters, Lib. Com., Preuves, 58. A charter to Calais granted by the Count of Boulogne in 1210 contains this passage:—'Si autem scabini vel queremanni super se judicium habuerint quod dicere nesciant et diffinire, apud Merc de judicio illo suam facient inquisitionem; et si apud Merc super hoc docti esse non poterunt, judicium illud inquirent apud Breborc.' (Ibid., 67.) Beeringen, in 1239, received the liberties of Liége:—'Si vero scabini prefate ville super sententia reddenda dubitaverint, illam a scabinis de Hasselt debent requirere, et sicuti ab illis didiscerint. ipsam tamquam justam, ex warandia eorumdem, debent pronuntiare. Quod si forte scabini de Hasselt super sententia requisita ipsos vel nollent vel non sufficerent certificare, extunc dicti scabini de Beringen sententiam illam a scabinis Leodiensibus requirent personaliter, quam, ut ab illis didiscerint, eorum fulti auctoritate, tanquam justam pronuntiabunt.' (Ibid., 145.) Cf. also ibid., 62.

[2] Ibid., 175. Soon after this grant had been made, the magistrates of Louvain, on the demand of the duke of Brabant, sent a copy of their charter to the townsmen of Merchten. (Ibid., 176.)

vinage de la ville de Saint Aumer, et que s'il leur en fault aucune chose, qu'il le doivent enquerre as eschevins de le hale de Saint Omer[1].'

Lannoy is enjoined to resort to the same tribunal under similar circumstances:—

'Scabini de Alneto ad kerkam seu sensum ad hallam ipsorum majorum et scabinorum apud Sanctum Audomarum, quando ipsi scabini kerka seu sensu indigent, venire tenentur[2].'

One might infer from these and other passages in the charters that the development in Flanders was virtually the same as in England; but, whatever the theory or the original intent of the law-givers may have been, the practice in Flanders was often something very different from what we find in Great Britain, as is evident from the following case. A dispute arose between Bruges and Dam, the former claiming appellate jurisdiction over the latter ('Ke on pooit apieler devant jugement de ceaus dou Dam a ceaus de Brouges, comme a leur kief'). In the year 1289 Count Guido, to whom the matter was referred, decided as follows:—Bruges is 'kief' of Dam, in this manner that the plantiff can appeal to the magistrates of Bruges, if those of Dam do not decide the case within three adjournments ('trois respis par trois jours de plait continuels'). Any judgment rendered at Dam after such delay is null and void. But within this period the judges of Dam can consult with those of Bruges ('traire a leur kief a Bruges pour avoir sens et jugement'). If judgment is rendered at Dam within the time specified, and either of the parties is dissatisfied, he can appeal to Bruges ('apieler les puent de faus jugement a leur kief de Bruges[3]').

In West Flanders such dependent towns were called 'smale steden,' which in turn could have others affiliated with them ('smale steden' of the 'smale steden'). These smaller or minor towns were even required to range themselves under the banner of their 'kief' in time of war[4]. Bruges and Ypres are said to have acquired the right of appointing the magistrates ('scabini') of all their 'smale stede[5].'

For Italy, one striking example of affiliation will suffice. Giovanni Villani[6] informs us that in the year 1338 Eternal Rome, the illus-

[1] Giry, St. Omer, 199.
[2] Ibid., 146, A.D. 1279.
[3] Warnkönig, Fland., ii. Pt. 2, p. 16, and No. cxxvi. Cf. Coutume de Bruges, 260, 285.
[4] Warnkönig, Fland., i. 382, 383.
[5] Ceuleneer, Communes Belges, 194.
[6] Chronica, liber xi. cap. 96. Pistoia

trious mother of laws, once the envied precedent of the greatest cities of the world, was not ashamed to send to Florence for the latter's laws and ordinances:—

'E mandoro loro ambasciadori a Firenze a pregare il nostro comune, che mandasse loro gli ordini della giustizia . . . et altri buoni ordini che noi avevamo.'

'And note,' the chronicler proudly adds, 'what mutations the centuries bring: the Romans in ancient times did build the city of Florence, and give their laws unto her; and now in our time they send unto us, the Florentines, for laws.'

The most famous Spanish exemplars were Sepulveda, Logroño, Sahagun, Leon, Toledo, and, above all, Cuenca for Castille and Leon; Jaca, Daroca, and Sobrarbe for Aragon and Navarre; Valencia for the kingdom of Valencia; and Barcelona for Catalonia[1]. In the year 1187, Alphonso II said that from Castille, Navarre, and other lands, people were wont to betake themselves to Jaca for the purpose of becoming acquainted with its customs, which they transplanted to their own communities:—

'Scio enim quod in Castella, in Navarra, et in aliis terris solent venire Jacam per bonas consuetudines et fueros ad discendos, et ad loca sua transferendos[2].'

Pedro I conferred the privileges ('fueros') of the city of Valencia upon all the other towns of the kingdom of Valencia, desiring:—

'Quod in omnibus libertatibus [Valentiae] . . . . . partem habeatis ac in eisdem omnibus vos et vostros esse volumus participes et consortes[3].'

According to a charter of Alphonso V of Aragon, dated 1450, Barcelona was pre-eminent among his cities, its constitution being sought after far and wide:—

'Inter alias ditionis nostrae Civitates caput extulit, et jam pene omnes aliae ad instar illius sese gubernare et rempublicam exercere studeant[4].'

In Germany, in strong contrast to England, the development was carried to its extreme logical conclusion. The whole country was

also borrowed much of its constitution from Florence. Hence the former's archives constitute a valuable supplement to the latter's. (Zdekauer, Statutum Pist., p. lx; cf. Hist. Review, 1888, p. 555.)

[1] Lembke und Schäfer, Spanien, ii. 418–428; iii. 178–202, *et pass.*

[2] Moret, Investigaciones, 535.

[3] Lembke und Schäfer, iii. 390. A.D. 1283.

[4] Ibid., iii. 382.

one great network of inter-dependent municipal courts in frequent communication with each other. Affiliation was so prevalent, and constituted so strong a bond of union between the towns, that eminent authorities regard it as one of the chief factors leading to the formation of the North German municipal confederations and the Hanseatic League[1].

The parent community, to which the daughter towns appealed—i. e. to which they had their 'Rechtszug'—was called their superior court, their 'Oberhof[2].' The oldest and most renowned of these 'Oberhöfe' were Cologne for the Rhine district; Soest and Lübeck for the northern provinces; Magdeburg for the east; and Frankfort-on-the-Main for the south-west. To these may be added Regensburg and Nüremberg for Bavaria, Dortmund for Westphalia[3], Eisenach for Thuringia, Strasburg and Colmar for Alsace. Some of their daughter towns became almost equally renowned as 'Oberhöfe'; for example, Freiburg in Breisgau, which derived its constitution from Cologne, and became the 'Oberhof' of more than thirty other towns; Breslau and Halle, which disseminated the laws of Magdeburg through Silesia, Poland, and Bohemia; and Culm—another offspring of Magdeburg—which in turn was the chief model for the towns of Prussia ('inter iura municipalia civibus concessa ius culmense in prusya precipuum reputetur[4]').

[1] Schäfer, Hansastädte, 78–81; Höhlbaum, Urkundenbuch, i. p. xiii; iii. 194, 198. In 1264 Lübeck and its affiliated towns formed a league for mutual defence. (Ibid., i. p. xiii; cf. ibid., iii. 194, 198).

[2] The 'Oberhof' of a town was generally, but not necessarily, the source of the latter's laws, i. e. its mother town. In some cases one community may have appealed to another without having been previously affiliated with it, the 'Oberhof' being perhaps the ancient seat of royal or palatine jurisdiction. See Michelsen, Oberhof zu Lübeck, 7–8; Von Maurer, Städteverf., iii. 765. But this must be regarded as an exceptional phenomenon.

[3] 'Omnes sententiae de quibus dubitatur, requirendae sunt apud nos [i. e. Dortmund] intra Rhenum et Wiseram de omnibus civitatibus Teutoniae, quae sunt in romano imperio ex ista parte Alpium, in hunc modum: civitas illa, ubi talis sententia dubitativa vertitur et super illa ad nos Tremoniam appellatur, in scripto debet ad nos transmittere sententiam illam, ut ipsam diffinitivam feramus,' etc. (Michelsen, 5; Gengler, Codex, i. 875.) See also Frensdorff, Dortmunder Statuten und Urtheile.

[4] Gengler, Stadtrechtsalterthümer, 370; and Codex, i. 685. Cf. below, p. 277; und Steffenhagen, Der Kulmer Oberhof.

The following table by no means purports to be complete[1]:—

COLOGNE
- Bern
- Ueberlingen
  - Ravensburg
  - Buchhorn
  - Kaufbeuren
- Freiburg[2]
  - Aarberg
  - Reutlingen
  - Laupen
  - Tübingen[3]
    - Elbingen
    - Sindelfingen, etc.
  - Thun, etc., etc.
- Altorf
- Helmershausen
- Colmar
  - Dattenried
  - Kaiserberg
  - Münster.

MAGDEBURG
- Breslau
  - Goldberg
  - Hainau
  - Liegnitz
  - Strehlitz, etc.
- Leipzig
- Brandenburg
  - Spandau
    - various towns
- Halle
  - Neumarkt
    - Brieg
      - Grottkau
    - Sduny
    - Festenberg
    - Mstow, etc.
- Culm
  - many Prussian towns
- Quedlinburg
- Stendal
  - various towns.

[1] These lists are based on materials furnished by Michelsen, Oberhof, Vorrede, and pp. 1–83; Von Maurer, Städteverf., i. 189–197, iii. 760–782; Thomas, Oberhof zu Frankfurt, 49–68, 117–174; Gaupp, Stadtrechte, *passim*; Tzschoppe und Stenzel, Urkundensammlung, 109–117; Harprecht, Diss. de curiis superioribus. See also Gengler, Codex, i. 28, 103, 155, 173, 190, 234, 375, 394, 404, 432, 610, 621, 649, 681–687, 712, 764, 875, 904, *et pass.*; Höhlbaum, Urkundenbuch, iii. 1, 194, 198, 513, *et pass.*; Gaupp, Das alte Magdeburgische und Hallische Recht; Hasse, Das Schleswiger Stadtrecht; Tomaschek, Der Oberhof Iglau in Mähren; Loersch, Ingelheimer Oberhof; Nitzsch, Uebertragung des Soester Rechts auf Lübeck; Franklin, Magdeburger Weisthümer für Breslau; Huber, Das Köln. Recht in den Zähring. Städten.

[2] 'Dis sint die Stette die irü recht nement hie zuo Friburg.' Thirty names follow. See Gaupp, Stadtrechte, i. p. xxvi; Gengler, Codex, i. 764. The document belongs to the beginning of the fifteenth century.

[3] 'Nota diss hernach geschriben stett, märckt vnnd dörff hollentt ir urttel vnnd rechtt allhie zu tüwingen.' About seventy-five names follow. ('Stadtrecht,' 1493; Von Maurer, Städteverf., iii. 769.)

- **SOEST**
  - Lübeck
  - Minden
  - Warburg
  - Lippstadt
    - Hamm
      - Lünen
      - Unna
    - Hagen
    - Rheda
  - Medebach
  - Siegen.
- **LÜBECK**[1]
  - Hamburg
  - Ploen
  - Oldenburg
  - Elbing
  - Burg
  - Kiel
  - Rostock
    - Stralsund
    - Tribesees
  - Wismar
  - Wittenburg
  - Greifswald
    - Treptow
  - Reval, and many others.
- **FRANKFURT**[2]
  - Ansbach
  - Coblentz
  - Darmstadt
  - Gelnhausen
    - Hanau
    - Hünefeld
    - Schmalkalden, etc.
  - Giessen
  - Heilbronn
  - Hohe Mark[3]
    - Homburg, etc.
  - Homberg
  - Münster
    - Ahlen
    - Bielefeld
    - Bocholt, etc.
  - Oppenheim
  - Sulzbach
  - Trier
  - Wimpfen[4]
    - Rorbach, etc.
  - Würzburg
    - Fürth
  - And many others.

[1] Michelsen (pp. 47–82) enumerates more than a hundred towns affiliated with Lübeck. See also Dreyer, Einleitung, 260–270; Frensdorff, Das Lübische Recht, and Verfassung Lubeck's; Hasse, Quellen des Ripener Stadtrechts; Höhlbaum, Urkundenbuch, i. pp. xiii, xiv; iii. 513.

[2] Thomas (pp. 119–162) mentions some three hundred daughter towns of Frankfort.

[3] There were thirty-three communities, many of them mere villages, in filial relation with Hohe Mark (Thomas, 141).

[4] 'Diss Stett und Dorffer alter Fry-

Sometimes the grant of affiliation is made in language not very unlike that which we find in the charters of England. In 1242 Count John confers upon Kiel the laws of Lübeck:—'ut tali jure, prout civitas Lubecensis utitur, ita civitas praesens libere et quiete perpetuo perfruatur[1].' Not many years later Northeim is endowed with the law and institutions of Göttingen:—'tale jus . . . quale burgenses nostri de Gotinge actenus habuerunt ut . . . fruantur similibus institutis[2].' As in England so in Germany, after such a grant there may have been in some cases little or no intercourse with the mother community as such.

Generally, however, a clause is added indicating the relationship henceforth to subsist between them, a clause that very rarely occurs in the municipal charters of England[3]. In the year 1286 the laws of Lübeck are conferred upon the city of Massow:—

'Quemadmodum idem jus in aliis nostris civitatibus observatur, ubi si necesse fuerit propter causas decidendas exigent et requirant[4].'

In the year 1279 the burgesses of Limburg received a charter from their lord from which the following is extracted:—

'Si vero ipsi Scabini [of Limburg] super sententia hujusmodi ferenda inter se discordaverint, jus oppidi Fr. [i.e. Frankfort-on-the-Main] querent, et nos illo contenti esse debemus[5].'

The Landgrave of Thuringia, in one of the statutes which he conferred upon Eisenach in 1283, states:—

'Quod omnes aliae nostrae civitates et illa oppida quae pertinent ad dominium nostrum et principatum, ex antiquo jura sua requirant apud praefatos cives nostros de Ysenach, et recursum ad ipsos habeant, aliquas percipiendo sententias difficiles et obscuras[6].'

Breslau gives its laws to Goldberg, but the latter is enjoined to have recourse to the former in all pleas:—

'Omnia nostre civitatis jura, prout apud nos servantur, porrigimus et donamus, ita quoque, ut super omnibus causis, tam parvis quam magnis, civibus predicte civitatis incumbentibus in omni jure ad

haitt nach pflegen ir Urtel by Uns zu holen als vor dem Obernhouff.' The names of four 'Städte' and thirty-two 'Dörfer' follow. (Wimpfener Oberhof-Urtheilsbuch, 1474–1608. Harprecht, Dissert., 425.)

[1] Michelsen, 51.

[2] Schmidt, Urkundenbuch, i. 11.

[3] I have found only three cases. See above, pp. 266, 267.

[4] Michelsen, 14.

[5] Thomas, 145.

[6] Gaupp, Stadtrechte, i. 201.

nostram civitatem Wratislaviam perpetualiter recursum habere debeant' (1292[1]).

In like manner the citizens of Liegnitz promise to submit doubtful cases to Breslau:—

'Illas sentencias, in quibus nobis est ambiguum scrupulus et erroris debemus ferre in Wratislavia, contradiccione qualibet relegata' (1302[2]).

Breslau, on the other hand, looked to Magdeburg for help in difficult legal cases:—

'Nos scabini civitatis Magdeborch lucide protestamur, civitatem Wratislaviam longevo tempore, cujus memoria aput nunc viventes non exstat, jure opidano seu civili Magdeburgensi fuisse subjectam, ita videlicet, quod, quandocunque ambiguitatis quid super jure civili Magdeburgensi aput vel inter cives Wratislavie civitatis exortum fuerat, recurrendo ad nostram civitatem diffinitam sentenciam ab antecessoribus nostris et a nobis hucusque obtinebant[3].'

In 1345 Baldwin Bishop of Paderborn granted the townsmen of Driburg, among other privileges, that they should 'seek their law' at Paderborn whenever the magistrates of Driburg could not decide any legal dispute for them:—

'Voerdmer worden de borghere vor deme richte scelaftich vnder sich vmme recht eder vmme ordele, dat scolden se vor iren rath bringhen, dat se dat scededen; kunden se aver des nicht ghesceden, so scolden se dat bringhen an den rat to Paderborn, dar se ir recht soken scolen[4].'

The magistrates of Magdeburg endow Schweidnitz with their burghal constitution, and then speak of their 'auctoritatem . . . ut aliis civitatibus juris sentencias valeamus amministare.' They also permit the 'scabini' of Schweidnitz to transmit to other towns the laws and judgments received from Magdeburg:—

'Si scabini civitatis Suidenicensis aliis civitatibus et villis, circa se situatis . . . possint et valeant jus Magdeburgense et sentencias juris a nobis datas ulterius distillare[5].'

From such passages as those that precede, we can scarcely infer the existence of anything more than a higher court of consultation, its functions being to give advice *before* the subordinate tribunal had rendered judgment. Doubtless in some German towns, e. g.,

[1] Tzschoppe und Stenzel, 416.
[2] Ibid., 443.
[3] Gengler, Codex, i. 375, A D. 1369.
[4] Ibid., i. 904.
[5] Tzschoppe und Stenzel, 586–587, A.D. 1363.

the 'Oberhof' at Frankfort[1], the development stopped at this point, though even in such cases the relationship was more intimate than in England.

But the language of many other documents is much stronger, and points to the transition into something that approximated real appellate jurisdiction; being, as an old writer would have expressed it, more 'in vim appellationis quam consultationis[2].' Thus the citizens of Buchhorn are to appeal to Ueberlingen, whenever they are dissatisfied with a judicial decision at home:—

'Item statuimus . . . quod quicumque civium de Buchhorn ab aliqua appellat sententia, illam appellationem juxta jus et statuta civitatis de Uberlingen prosequetur, et quicquid sententiatum fuerit a civibus de Uberlingen, illud ratum a partibus est servandum[3].'

The burghers of Freiburg may appeal to Cologne ('Coloniam appellabunt'), if either party in a suit rejects the judgment:—

'Si super aliqua sententia fuerit inter burgenses orta discordia ita quod una pars illam vult tenere sententiam, alia vero non,' etc.[4]

In like manner Hohenstein appeals to Osterode: 'Gescholden Ortheyl und alles recht sollen sy haben in der Stadt Osterode[5].' Burg receives the laws of Lübeck. The 'Radlüde' of Burg are to pronounce judgment according to these laws. If any one is discontented with the decision he is to appeal to the mother town: 'und weme dat nicht behaget, de mag dat schelden vor den Rath tho Lübeck[6].'

Speaking of Culm Gengler refers to:—

'Die anordnung eines regelmässigen Rechtszuges von den Ordensstädten an den culmer Rath, welchem die zweifache Befugniss, dunkle Rechtspunkte durch Weissthümer zu erläutern und angefochtene Urtheile oberrichtlich zu bescheiden, eingeräumt wird . . . Diese jüngeren Städte wurden dann auch meistens in ihren Fundationsbriefen entweder indirect durch Bewidmung mit dem jus Culmense oder direct durch die Anweisung, "ire gestraften (gescholden) vrteil czu holen czu dem Colmen" mit letztgenannter Stadt in die fragliche communication gebracht[7].'

[1] Michelsen, 16, 17.

[2] Harprecht, 437.

[3] Michelsen, 5; Gengler, Codex, i. 432. Charter of Rudolph I, 1275.

[4] Gaupp, Stadtrechte, ii. 33: 'Freiburger Stadtrodel,' A.D. 1200–1250.

[5] Michelsen, 5.

[6] Ibid., 14.

[7] Gengler, Codex, i. 686, 687. Later on (in the fifteenth century) Königsberg took the place of Culm as the chief 'Oberhof' of Prussia, 'dahin man alle gescholttene Vrtheill aus den andren Stedten auff dieser Seitten hatt mussen appelliren vnd daselbst rechtfertigen lassen.' (Ibid., i. 687.) Concerning

A charter granted to Bromberg in 1346 contains this clause :—

'Si contigerit, ut per aliquem querulantem aut respondentem sententia aliqua inventa per scabinos argueretur, non alias extunc quam per consules dicti oppidi ipsa sententia debet declarari; et nisi sufficerent, tunc ad consules Wladislavienses [1] pro sentenciae hujusmodi declaratione recurretur [2].'

In 1297 there was an appeal in a case of murder from the local court of Colberg to that of Greifswald, the magistrates of the former writing to those of the latter as follows :—

'. . . cujus rei gracia dilectos nostros de concilio socios ad vestre discrecionis judicium transmittimus, exorantes quatenus discussione diligenti inter vos habita, quid de hiis vobis justum visum fuerit, distinguatis, cum vos fontes nos vero justicie rivuli defluentes [3].'

The Emperor Frederick I, in the year 1173, made the following general regulation for the benefit of Flemish merchants in Germany :—

'Si quis mercator senserit se gravari contra justiciam in loco minori, licentiam habeat appellationem faciendi ad majorem locum, a quo minor locus justiciae suae leges acceperat [4].'

Thus there can be no doubt that Lübeck and many other German mother towns were real courts of appeal [5], their functions being to revise judgments already passed,—the specific case being laid before them, and not, as in England, a general question as to what was law and custom on a given subject, on which the magistrates of the 'locus minor' wished to be enlightened before passing judgment.

In the town archives of Germany are still extant whole volumes of appeals of various kinds to the 'locus major [6].' Some of these have been printed [7]. Though they are very interesting, and throw much additional light on the subject of affiliation, we cannot stop to discuss them. We must content ourselves with a single example, one that commends itself to us on account of its unusual brevity. The 'scabini' of Leitmeritz decide a case in Königgrätz. Hans von der

Danzig, one of Culm's daughter towns, a record of 1378 has this passage: 'Ir gestraften orteil sullen sy holen czu dem Colmen.' (Ibid., i. 712.)

[1] i. e. Leslau.

[2] Gengler, Codex, i. 404.

[3] Ibid., i. 610.

[4] Warnkönig, Fland, i. No. xiv.

[5] Michelsen, 9, 15, 17, 18; Thomas, 54; Von Maurer, Städteverf., iii. 771, 772; Tomaschek, Der Oberhof Iglau, 19.

[6] Michelsen, p. ix; Gengler, Codex, i. 690, *et pass.*

[7] The best collections in print that have come to my notice are those of Michelsen for Lübeck, those of Thomas for Frankfort, and those of Tomaschek for Iglau. See also Frensdorff, Dortmunder Statuten; Magdeburger Weisthümer aus dem Görlitzer Reichsarchive; Thomas, p. xvi; Behrend, Ein Stendaler Urtheilsbuch (Urtheile aus Magdeburg).

Dobruch, the guardian of Hertel's son, must allow his ward to do what he pleases with the money bequeathed to him, now that the latter is of age :—

'Prudentibus viris et honestis judici ac juratis in Grecz magister civium, consules ac scabini in Lutmericz multum servicii et honoris. Noch alle der rede alz ir uns geschribyn habt in ewren bryfen under der stat ingesegil under dem grossen und dem cleynen, so teil vir in eym rechtyn urteil alz unz das recht weysyt und lert, daz der czu seynen jarn kummen ist seyn gelt daz ym vorburgit ist mak gebin wem her vil, daz ist um Hertels sun kegen Hannus von der Dobruch, der daz gelt inne hat (um) vurmundschaft [1].'

The municipal 'Oberhöfe' of Germany were still flourishing in the first half of the sixteenth century. The Emperor Charles V speaks of them as of a recognized legal institution :—

'So sollen die Richter, wo ihnen zweifel zufiele, bei den nächsten hohen Schulen, *Städten*, Communen . . . Rath zu suchun schuldig sein [2].'

But they gradually vanished in this and in the following century, being superseded by the tribunals of the ruling princes as courts of appeal, and by the juridical faculties of the universities as courts of consultation [3]. In the year 1721, Lübeck, one of the most long-lived of the 'Oberhöfe,' exercised its functions for the last time [4].

Many towns of Switzerland were affiliated with those of Germany, especially with Freiburg in Breisgau [5]. The laws of Magdeburg prevailed in the towns of Poland and Bohemia. Leitmeritz, of which I have already spoken, enjoyed all the 'jura, libertates et consuetudines Magdeburgenses,' and was the principal civic 'Oberhof' of Bohemia [6] :—

'Et ad eos per omnes et singulas civitates regni nostri Boemie, que eisdem utuntur iuribus, super dubiis sententiis definiendis debeat haberi recursus, sicut hactenus fieri est consuetum [7].'

In England, affiliation involved only the interpretation of law

[1] Gaupp, ii. 262.

[2] 'Peinliche Gerichtsordnung vom Jahre, 1532,' § 219; Thomas, 54.

[3] Von Maurer, Städteverf., iii. 777–781; Michelsen, 30; Thomas, 202.

[4] Michelsen, 35.

[5] Gaupp, ii. p. iv, *et pass.* See also Forel, Chartes Com. de Vaud, Introd.

[6] Gaupp, i. p. xxiii, and ii. 256–274; Tzschoppe und Stenzel, 111; Röpell, Verbreitung des Magd. Stadtrechts in Poland; Kaluzniacki, Die Poln. Recension der Magdeb. Urtheile.

[7] Gengler, Stadtrechtsalt., 371. Charter of King John of Bohemia granted to Leitmeritz in 1325.

and custom—advisory functions; on the Continent, and especially in Germany, it led to full appellate jurisdiction—revisory functions. The one was a judicial, the other only a 'customal' affiliation. In England the appeal, such as it was, was a right or privilege of the daughter town, to be exercised at her magistrates' discretion; on the Continent it became a solemn obligation, which the latter could not evade. This divergence of development was due to a cause which made the whole course of continental municipal history different from that of England, a cause whose effects are still indelibly written in the rock and marble of castle, belfry, and *hôtel de ville*—I mean the weakness of royal authority on the Continent. If the English sovereign in the twelfth century was not 'every inch a king,' he was by several inches more a king than the other rulers of Western Europe. On the Continent, towns became small republics, even more independent than the feudal lords; in England they remained integral portions of the body politic over which the king ruled. The former frequently secured the privilege *de non appellando*, almost complete judicial autonomy; the latter were always, more or less, under the control of the king's courts. Richard I's jest, that he would sell London if he could find a buyer [1], is not meaningless; the most potent of the English boroughs were at times abjectly humbled by the royal will. The crown would not have brooked anything so derogatory to the royal prerogative as judicial appeal from borough to borough; nor would the latter feel the need of civic 'Oberhöfe' in a country where royalty was strong enough to do them justice. But royalty on the Continent was still too weak to act as a competent court of appeal [2]; and the unchecked encroachments of feudal lords, who often attempted to arrogate to themselves this same superior jurisdiction, tended to bring the affiliated towns still nearer together. It was very natural for the magistrates of a town in their doubt and ignorance to turn for legal advice to the community whence their laws had been derived, as helpless children to a kind mother; it was even more natural, that under the stress of such circumstances as those just mentioned, they should gradually refer disputed cases

[1] Norton, London, 65.

[2] In the year 1377 Count Katzenelenbogen entered a plaint in the imperial court against the town of Limburg. His suit was rejected, and he was referred to the municipal council of Frankfort on the ground that the latter was the 'Oberhof' of Limburg (Von Maurer, Städteverf., iii. 771). One can hardly conceive of such a thing happening in medieval England.

to the parent town, until the latter became a regular court of appeal. The security engendered by a strong royal judicature in England tended to evolve self-sufficient rival boroughs, with a gild merchant, rather than autonomous or judicially interdependent towns and municipal federations, such as we find in other countries of Europe.

This explanation of the peculiar development of affiliation on the Continent is confirmed by the fact that in Germany civic 'Oberhöfe' gradually lost their influence, as the central authority in the various principalities grew more powerful (in the sixteenth and seventeenth centuries)[1]. The same is doubtless true of France from the time of Philip the Fair, the towns becoming more and more dependent upon the royal courts[2].

Our inquiry shows how certain institutions may be common to all civilized nations, the simultaneous outgrowth of human nature and human thought, and yet be profoundly modified by a peculiar environment; hence that the deduction of historical truth by analogy, if not employed with caution, leads to error. But great as is the diversity between the ancient affiliation of English and that of continental towns, our attention is arrested still more by the similarity, by the mere fact of the independent co-existence of so peculiar an institution in many different countries. Is not the historian of to-day, with all his nice canons of criticism, too prone to derive one institution from another, to look for the germ in the distant past or in a distant country, when the mystery of the inception lies no farther and no deeper than in the ordinary, immutable laws that govern human action and the growth of all spontaneous, indigenous institutions?

[1] 'Seitdem die Landeshoheit fester begründet war, seitdem wurde das Zugrecht an die Oberhöfe beschränkt, oder auch gänzlich verboten, und statt dessen eine Berufung an die Landesherrn oder an ihre Hofgerichte eingeführt.' (Von Maurer, iii. 776; cf. Michelsen, 29; Thomas, 202.)

[2] Giry, St. Omer, 201; Flammermont, Instit. de Senlis, 22, 23.

APPENDIX F.

The Continental Gild Merchant[1].

Municipal development in England cannot be accurately measured by that of the Continent. The inverse proposition is equally true. In speaking of continental Gilds I do not wish to take refuge in the argument of analogy,—to substitute parallels for proofs. But the history of the English Gild Merchant ought to help correct erroneous views concerning the growth and development of the corresponding continental institution. For many writers who have regarded this Gild as the germ of the municipal constitution throughout Western Europe, have derived much of their data from Great Britain[2]. Moreover, the Gild Merchant occupies a more prominent place in town charters and in the municipal polity in England than on the Continent; hence continental writers have pointed to England as the country in which this Gild exerted its maximum influence[3]. Now if this fraternity was not the germ of the English municipality, but only a potent factor in its evolution, it may be fairly presumed that the Gild's influence on the Continent was not greater. This presumption is confirmed by much positive evidence.

The Gild Merchant of Western Europe is not mentioned before the middle of the eleventh century; and does not come into prominent notice before the twelfth century[4]. It doubtless origin-

[1] There is no good general account of this subject. I understand that Professor Höhlbaum of Cologne is preparing a treatise on 'Die älteren Kaufgilden von West-Europa.' He is eminently fitted to deal with the subject.

[2] Wilda, Gildenwesen, 239, 244–255; Thierry, Recits, 182. Cf. Raepsaet, Œuvres, v. 342–344; Gierke, Genoss., i. 230, 231, 243, 345; Brentano, p. xcviii, *et seq.*; De Vigne, p. xii.

[3] See the preceding note; and Drioux, Assoc., 138; Sartorius, Hanse, p. xvi.

[4] Above, p. 4, n. 2; Pigeonneau, Commerce, i. 113, 114, 238; Ceuleneer, Communes, 161, 162; Nitzsch, Kaufgilden, 370, *et seq.*; Arnold, Freistädte, i. 252. In 953 a 'schola negotiatorum' with a head-man or 'capitularius' is mentioned in the records of Ravenna; this was probably a weak survival of the Roman 'collegia,' though in most

ated in the eleventh century when a renaissance of commerce began in the western countries of Europe[1]. This regeneration of trade made merchants feel the need of union and mutual support, a need which was satisfied by the creation of the 'Gilda Mercatoria.'

This fraternity as an official and constituent part of the municipality is met with much less frequently on the Continent than in England. It is rarely mentioned among the liberties granted in the municipal charters[2]; it more commonly received a separate charter of its own[3], like the English craft fraternities. In some cases it seems to have exercised important civic functions as in England, regulating the whole trade monopoly of the town[4]. But, as a rule, this was not the case; the continental Gild Merchant generally corresponded to the later civic mercantile fraternities of England, established either for foreign commerce or to regulate a particular part of the local trade monopoly[5]. Its place in the civic government was in such cases similar to that of many later

towns of Italy the 'collegia' seem to have disappeared. See Hegel, Städteverf., i. 256, ii. 261–265; Hüllmann, i. 323; Lattes, Diritto, 39; cf. ibid., 36. Wauters speaks of a Gild Merchant at Thiel in 1020 (Lib. Com., 256); but the sources mention only merchants, not a fraternity of merchants. The same is true of the Gild of Cambrai in 1001 mentioned by Giry (St. Omer, 279). The 'gildoniae de naufragio' of Charlemagne's Capitularies are called by Von Maurer 'Handelsgilden' (Städteverf., ii. 358); it is not probable that they were perpetuated in the later Gild Merchant. The earliest distinct reference to a medieval Gild Merchant that I have met with is that of St. Omer (1072–1083. Below, p. 290). Valenciennes is cited as another early example, above, p. 4, n. 2; but there is some dispute as to the date of its origin, and it may not have been a Gild Merchant, though merchants belonged to it.

[1] Pigeonneau, Commerce, i. 110, 117, 122; Höhlbaum, Urkundenbuch, iii. 379, 380; Luchaire, Inst., ii. 160; Arnold, Freistädte, i. 140; Vanderkindere, Artevelde, 62.

[2] For some references to it in town charters, see Giry, St. Omer, 372; Wauters, Preuves, 67, 68; below, pp. 290-294.

[3] Below, pp. 294–299.

[4] Giry, St. Omer, 275, 281; Nitzsch, Kaufgilden, 372-374, 387-391, and Genossenschaften, 18–23, 26.

[5] Von Maurer, Städteverf., ii. 254–279, 357; Götze, Stendal, 97-119; Höhlbaum, Urk., ii. 25, 26, 168, 169, iii. 385, 414, 415, 464, 465, 477; Arnold, Studien, 203; Nitzsch, Kaufgilden, 384, 398, 401; Sartorius, Hanse, p. xviii; Gengler, Codex, i. 139, 220, 267, 472, 473, 680, 923, 968, and Stadtrechtsalt., 460–463; Wilda, Gildenwesen, 263–288; Pigeonneau, Commerce, 111-115, 118–123; Rambaud, Civil. Franc., i. 409; Chéruel, Rouen, i. 245; Wauters, Lib. Com., 265, 585, 586; Fortuyn, 221, 222, *et pass.*; Gierke, Genoss., i. 344–349; Levasseur, Classes Ouv., i. 285–296, 510; Schles. Urk., p. xxiv. In many of these towns the chief mercantile Gild was connected with the cloth trade ('Gewandschneider-Gilde,' 'Lakengulde,' 'Pannicidae,' etc.).

craft associations. In Italy the Gild Merchant in some places dominated over or regulated the crafts; in a few towns it was merely on an equality with the latter; in many places it was a union of various mercantile and industrial fraternities, as was sometimes the case in England[1].

The following are the most common names of the Gild Merchant and its officers:—in Germany, Koplude Gilde, Koplude Innung, Kopmanns-Gilde, Kopgilde, Hanse, Gildemeister, Aldermann, Dekan[2]; in the Netherlands and parts of north France, Gilda Mercatoria, Fraternitas Mercatorum, Comansgulde, Comannen Gilde, Hanse, Oldermann, Decani[3]; in Denmark, Convivium, Holy Trinity Gild, St. Nicholas Gild, etc., Alderman[4]; in Italy, Mercanzia, Università (Società or Communità) de' Mercanti, Consoli (less frequently a Podestà) assisted by Notarii, Camerarii, Missi, Nuncii, etc.[5]. In some towns of Germany its meetings were called 'Morgensprachen[6].'

As regards the relation of the crafts to the Gild Merchant, it is clear that in some places the craftsmen or artisans were freely admitted into this body in the twelfth century[7]. In many towns they were excluded from it in this and the following century, especially from mercantile fraternities engaged in foreign trade[8]. On the whole, this exclusion seems to have been more frequent

[1] Lattes, Diritto Com., 23, 24, 38, *et pass.*; above, pp. 118–122.

[2] Höhlbaum, Urk., i. 86, 87, 259, ii. 25, iii. 414; Schmidt, Urkundenbuch, i. 178, 184; Hans. Geschichtsblatt, 1878, p. 22; Nitzsch, Kaufgilden, 370, 372, 387; Sartorius, Hanse, p. xvi; below, pp. 294, 295, 299.

[3] Wauters, Lib. Com., 586–589, and Preuves, 68, 234, 235, 265, 268; Miraeus, Opera Dip., ii. 1025, 1027; Warnkönig, Fland., i. 351; ibid., ed. Gheldolf, ii. 239; Vanderkindere, Artevelde, 64; Fortuyn, 197, 203, 228; Höhlbaum, i. 449, iii. 418, 477; Sartorius, Hanse, 74; below, pp. 290–298. For a bibliography of French gilds, see London Liv. Comp., v. 390; this Report, v. 385–396, also gives a sketch of the modern history of continental gilds.

[4] Wilda, Gildenwesen, 271–288.

[5] Lattes, Diritto, 23–51; Rezasco, Dizionario, 218, 219, 285, 286, 624; Hegel, Städteverf., ii. 257; Ficker, Forsch., iv. 357.

[6] Götze, Stendal, 103, 109; Höhlbaum, ii. 25, 26; Nitzsch, Genossenschaften, 26; Schles. Urk., p. xxvii.

[7] Nitzsch, Kaufgilden, 372–374, 387–391, and Genoss., 18–23, 26; Giry, St. Omer, 275, 281; Brentano, p. cvii; cf. below, pp. 298, 299.

[8] Wauters, Lib. Com., 278, 279, and Gildes, 721; Giry, St. Omer, 283; Van Mieris, Charterboek, i. 356; Höhlbaum, Urk., i. 244, 245; Nitzsch, Kaufgilden, 373; Götze, Stendal, 103; Gengler, Codex, 472, 473; Wilda, Gildenwesen, 274, 284; Moke, Mœurs, i. 193; below, p. 296. Cf. Pappenheim, Schutzgilden, 236–238; Wauters, Preuves, 265, 268. A craftsman was generally admitted to a mercantile fraternity if he agreed to renounce his craft.

and more rigorously enforced than in England. The craft societies first appear on the Continent, as in England, early in the twelfth century[1]. As commerce developed they multiplied, and the craftsmen severed whatever connection they may once have had with the Merchant Gild. There was probably in some cities a process of elimination or disintegration of the Gild into craft fraternities similar to that which occurred in England. Nitzsch has traced out this 'Scheidungsprocess' in Germany[2]. The comprehensive character of the Gild Merchant was no longer necessary when each class of craftsmen had its own fraternity.

There is no exact parallel in England to the great continental revolution of the thirteenth and fourteenth centuries by which the crafts threw off the yoke of patrician government and secured more independence in the management of their own affairs and participation in the civic administration,—in some cases even a monopoly of the latter, the civic constitution being remodelled with the craft fraternities as a basis[3]. True there were popular uprisings in England; but they were generally class conflicts between the poor and the rich, the 'burgenses minores' and the 'majores,' 'potentes,' etc., the crafts as such seldom taking part in these tumults[4]. While the continental municipalities were drifting from an aristocratic to a more democratic regime in the fourteenth century, those of England were drifting in the reverse direction, toward oligarchy, toward government by a close 'select body[5].' In

[1] Stieda, Zunftwesen, 22, 23; Von Maurer, Städteverf., ii. 356; Von Below, Stadtgemeinde, 72; Arnold, Freistädte, i. 252; Fagniez, Ind., 4; Fortuyn, 221; Wilda, Gildenwesen, 313. There are traces of a continuance of the Roman 'collegia' in some parts of Italy. For example, there was a 'schola piscatorum' in Ravenna in the tenth century. (Perrens, Florence, i. 190; Hüllman, Städtewesen, i. 321; Hegel, Städteverf., i. 256, ii. 265.) Fagniez surmises that the Butchers' Fraternity and the Hanse of Paris had a continuous existence from Roman times (Industrie, 3). Cf. Pigeonneau, Commerce, i. 115, 118.

[2] Nitzsch, Genossenschaften, 23, Kaufgilden, 376, 383, *et pass.* Cf. Götze, Stendal, 97–119, 143; Wilda, Gildenwesen, 266; Ennen, Köln, i. 536, 537.

[3] Von Maurer, ii. 540–723; Brentano, pp. cviii–cxiii; Gengler, Codex, 144, *et pass.*; Ennen, Köln, ii. 773–815; Schmoller, Strassburg's Blüthe, 33, 34; Arnold, Freistädte, ii. 291, *et seq.*; Giry, St. Omer, 160–164, 348, 349, and Rouen, i. 40–43, 440, 441; Luchaire, Inst., ii. 161; Moke, Mœurs, i. 197, ii. 11–13, 155, 156; Wauters, Lib. Com., 594–603; Hegel, Städteverf. Italiens, ii. 267–271; Leo, Italien, ii. 170; Fortuyn, 152–168, 187–194, 209–216, 234–238; Wenzelburger, Niederlande, i. 171–173; Perrens, Florence, i. 209–213; Schles. Urkunden, p. xxv.

[4] Above, p. 110.

[5] Ibid.

speaking of the continental revolution writers often err in calling the town government a Merchant Gild, in some cases where the patricians formed no real fraternity and had no organic connection with a Gild Merchant, in other cases where the civic aristocracy was a Gild but not a mercantile fraternity[1].

Many eminent historians have contended that on the Continent Gild and borough, gildsmen and burgesses, were identical terms, and that the whole civic constitution was derived from the Gild[2]. The evidence presented to support this view is very unsatisfactory, often indeed a mere emanation of the writer's mind to support a preconceived theory.

According to one of the most recent authorities, this theory is now being gradually abandoned in Germany: 'Die Vorliebe für die Gildetheorie nimmt in demselben Grade ab, in welchem die Kenntniss der deutschen Verfassungsgeschichte vorschreitet[3].' In Germany the gildsmen were not identical with the burgesses, nor the Gild administration with the civic administration[4]. The meetings of the municipal council sometimes took place in a gild-hall; but this circumstance may be as easily explained as the

[1] What Gervinus in 1835 said of Wilda applies to many modern writers: 'In der ganzen Zeit vor dem vierzehnten Jahrhundert, vor dem Aufkommen der Handwerksgilden, wo ein Patriciat sich in allen Städten von Europa in den ausschliesslichen Besitz der Regierung setzt, sieht er unter diesen adeligen Geschlechtern Alles von Gilden und Genossenschaften wimmeln.' (Kleine Hist. Schriften, 482.) There is no mention of any patrician Altbürgergilde in Germany before the thirteenth century (Arnold, Freistädte, i. 360). This old-burgher Gild—in the towns in which it really existed—was not necessarily identical with the Gild Merchant. See below, p. 287, n. 5.

[2] Wauters, Lib. Com., 19, 30, 265, 266, 281; Giry, St. Omer, 153, 275, 278, 281, 282; Brentano, English Gilds, pp. xciii, *et seq.*; Raepsaet, Œuvres, v. 342, 343; Gierke, Genoss., i. 243, 250; Vandenpeereboom, Ypriana, ii. 1–35, and Gildes, 244, 251–254; Götze, Stendal, 98, 101, 102, 114, 143; D'Hermansart, 12; De Lettenhove, Flandre, i. 147; Frensdorff, Dortmunder Statuten, pp. lii–lv; Warnkönig und Stein, Franz., i. 280 (but cf. ibid., i. 262, and Warnkönig, Fland., i. 332–335).

[3] Von Below, Stadtgemeinde, 56. Cf. what Heusler wrote in 1872: 'Mir scheint es . . . dass eigentlich diese Auffassung . . . jetzt als antiquiert zu betrachten sei' (Stadtverf., 11).

[4] 'Item decreverunt quod quicunque pro hoc delicto reacquiret a dominibus consulibus [i.e. civic council of Stendal] civilitatem, similiter a magistris gulde confraternitatem reacquirere deberet, ac si eam antea non habuisset.' (Höhlbaum, Urk., ii. 26, A.D. 1304.) See also Von Below, 29, 31, 33, 45, 56, 68; Von Maurer, Städteverf., i. 169, 170, 273; Gengler, Codex, 220; Ennen und Eckertz, Köln, i. 148, 149; Ennen, Köln, i. 533, 534; Hegel, Chroniken, xiv. pp. xlvi–lvi; Höhlbaum, Urk., iii. 414, 415; Nitzsch, Kaufgilden, 378, 379, 384, 386; Heusler, Basel, 116; Götze, Stendal, 102.

identity of gild-hall and town-hall in England[1]. Hegel, one of the best authorities on municipal history, holds that there is no basis to the hypothesis that the Merchant Gild originally ruled the town and was the germ of the municipal constitution. He argues very cogently that there are no facts to support this theory, and that, when the Gild Merchant first appears in towns, it clearly occupies a subsidiary place in the civic polity. Nothing short of a burghal revolution, he contends, could have changed the Gild from a dominant to a subordinate body. But neither the constitution of the towns nor the records in their archives bear any trace of such a revolution[2]. In like manner, Von Maurer[3] and Von Below[4] protest strongly against this theory; and it is wholly rejected by Heusler and Arnold. Wilda, who may be regarded as the originator of the theory, was obliged to admit that he could advance very little evidence to maintain it: 'Manches deutsche Stadtwesen hat sich wohl aus solcher kaufmännischen Altbürgergilde entwickelt, aber es lässt sich . . . nicht mit Gewissheit nachweisen[5].' Gierke, who strongly inclines to exaggerate the influence

[1] Above, pp. 80–83. 'Die einfachste Erklärung für diese Thatsache ist doch gewiss auch hier wiederum die richtige. Man benutzte zu den Rathsversammlungen das Gildehaus offenbar deshalb, weil man noch die Kosten der Erbauung eines besonderen Rathhauses scheute. Wir haben in modernen Verhältnissen zahlreiche Analogien dafür. Die Dorfgemeinden haben ja regelmässig kein eigenes Gemeindehaus, sondern benutzen für ihre Zwecke die Dorfschenke oder das Schulhaus . . . Auch im Mittelalter finde ich eine Analogie, welche jenes Argument entkräftet: in Worms benutzte man vor der Erbauung eines eigenen Rathhauses den Bischofshof zu Rathssitzungen.' (Von Below, 69.) Cf. Von Maurer, Städteverf., i. 169; Giry, St. Omer, 275. In Germany the term 'gildhall' was rarely used as the designation of the town-hall (Gengler, Stadtrechtsalt., 310).

[2] Sybel's Hist. Zeitschrift, xlix 335, 336. Throughout his argument Hegel has Dortmund particularly in mind.

[3] Städteverf., i. 166, 169, ii. 273–277.

[4] Stadtgemeinde, 29–33, 45, 46, 56, 68, 69.

[5] Gildenwesen, 239. Wilda (ibid., pp. 145–166) contends that an old 'Schutzgilde' or 'Altbürgergilde' was generally the germ of the municipal polity. He certainly does not prove this; nor do his followers, e. g. Gierke (Genoss., i. 243–250) and Pappenheim (Schutzgilden, 54–67, 428–436). They fail to prove that any such gilds existed before the twelfth century, much less that the latter were the basis of the civic constitution. Two of the best authorities on German municipal history have been unable to find an 'Altbürgergilde' before the thirteenth century (Arnold, Freistädte, i. 360; Von Maurer, Städteverf, i. 166. Cf. Gervinus, 481–485; Götze, 99; Brentano, xcvi). In fact, Von Maurer says: 'Altbürgergilden und Schutzgilden aber, wie dieses Wilda, Gierke, u. a. behaupten, haben sich in Deutschland nirgends gebildet . . . Es findet sich . . . in keiner deutschen Stadt von solchen Schutzgilden und Friedensgilden auch nur eine Spur'

of the Gild, makes a similar admission: 'Lässt sich auch in keiner deutschen Stadt ein unmittelbares Hervorgehen der Stadtverfassung aus einer alten Kaufmannsgilde nachweisen ... so sind doch einzelne Elemente aus der Verfassung einer Handelsinnung auch in deutsche Städteverfassungen übergegangen[1].' Nitzsch, whose essays[2] throw much light on the history of German Gilds, tried in vain to find such evidence; what he advances in support of this theory is conjecture not proof.

In France and Belgium recent authorities are adopting the view that the Gild was only one of various factors that aided in the development of the communal or civic constitution[3]. In Italy the 'consoli de' mercanti' and the 'consoli del comune' were distinct officers; the Gild Merchant was not co-extensive with the whole area of municipal administration or with the totality of the burgesses[4]. There is evidence to show that the same is true of the Netherlands[5] and Denmark[6].

The omission of all mention of the Gild in most of the charters

(Städteverf., i. 166). Heusler also rightly observes: 'Sobald man den Begriff der Schutzgilde für die Frage der Entstehung der Stadtverfassung verwerthen und bestimmt fassen will, zerrinnt er unter den Händen' (Stadtverf., 13).—There is a tendency to identify this so-called 'Altbürgergilde' with the Gild Merchant (Gierke, i. 243; Nitzsch, Genossensch., 24; Brentano, ch. iii); but these two categories of Gilds are not to be confused.

[1] Genossensch., i. 345.

[2] Niederd. Genoss., and Niederd. Kaufgilden, *passim*.

[3] Luchaire, Inst., ii. 159–161; Drioux, Assoc., 256, 257, 260, 261. The following writers vigorously combat the theory that the Gild was the basis of the municipality: Vanderkindere, Magistrats, 6–7; Ceuleneer, Communes Belges, 158–163, 168; Semichon, Trève de Dieu, ii. 114–117. In St. Omer the gild-officers and town-officers, gild-jurisdiction and town-jurisdiction, seem to me to have been distinct in the twelfth century; so too the 'homines de ghilda' and the 'cives' of Rouen. See Chéruel, Hist. de Rouen, i. 241–245; Pigeonneau, Commerce, i. 239.

[4] Lattes, Diritto, 23–56; Leo, Italien, ii. 166; Rezasco, Dizionario, 218; Giudici, Istoria Munic., iv. App.; Hegel, Städteverf., ii. 146, 257. Other material illustrating the subject may probably be found in Monumenta Historiae Patriae and in Lastig's Entwickelungswege und Quellen des Handelsrechts, to which I have not access. Lattes gives a long list of sources for the history of the Gild Merchant. See also Weber, Handelsgesellschaften, 168–170; and Manzoni, Bibliografia, cited by Supino, p. 514. For the later history of Italian trade fraternities, see Supino, Corporazioni.

[5] 'Si quis burgensis non confrater dicte gulde ... persolvat hansam,' etc. (below, p. 297). This passage shows that in Mechlin in 1276 there were burgesses who were not in the Gild. See also Wauters, Lib. Com., Preuves, 234, 235, 268, 269; Van Mieris, i. 356; Feith, De Gildis Gron., 77, 78; Miraeus, Opera Dip., ii. 1025–1027; Wenzelburger, i. 171; Höhlbaum, Urk., i. 449; Forschungen, ix. 515, 516. Cf. also above, note 3, and below, pp. 296–298.

[6] Wilda, Gildenwesen, 271–288.

and other burghal muniments of the eleventh and twelfth centuries bears testimony against the theory that town and Gild, town-law and gild-law, were then identical. In the thirteenth and fourteenth centuries the merchant fraternities often became an integral part of the town constitution with political functions; but this position was shared with them by the craft gilds. Wherever we find any early Gild Merchant possessing political, in distinction from commercial, functions (for example, representation in the civic council, power to appoint certain civic judicial officers, etc.), this may be accounted for by the general social influence of the Gild, which usually comprised many of the leading burgesses of a town[1]; in later times this political power of the Gild was frequently a result of the 'Zunftrevolution.' The Gild Merchant was merely grafted on the municipal constitution; it was not the germ of the latter.

The current of investigation on the Continent seems to be setting against the old artificial theories of the origin of medieval municipal government. That drift is in the right direction. Why seek the germ of the burghal polity in remote ages or remote causes when the formation of the latter in most countries may be explained by a natural process of growth from the rural township? The Gild was only one of various elements that played a prominent part in this process of municipal development.

[1] The civic magistrates of Copenhagen in the fifteenth century were usually taken from the Holy Trinity Gild of Merchants; in Flensburg all the members of the civic council belonged to the Gild of St. Nicholas (Wilda, Gildenwesen, 283, 286). These are Gilds that came into existence after the municipal constitution of the Danish cities was fully formed; no one can claim that, in these cases, the connection between the Gild and the town authorities was due to the derivation of the municipal polity from the Gild. By a parity of reasoning, we can claim that such a connection in earlier times does not in itself prove that the town constitution emanated from the Gild. Pappenheim, p. 431, admits that Wilda's arguments on this point are untenable.

DOCUMENTS ILLUSTRATING APPENDIX F.

Statutes of the Gild of St. Omer. [*Twelfth century*[1].]

Haec sunt consuetudines gilde mercatorie.

Si quis mercator manens in villa nostra vel in suburbio in gildam nostram intrare noluerit et pergens alicubi deturbatus fuerit vel res suas amiserit vel ad duellum fuerit provocatus, omnino nostro carebit auxilio.

Si quis gildam non habens aliquam waram vel corrigia vel aliud hujusmodi taxaverit et aliquis gildam habens supervenerit eo nolente mercator quod ipse taxaverat emet. Si quis vero gildam habens mercatum aliquod non ad victum pertinens valens V^gr^ s. et supra-taxaverit et alius gildam habens supervenerit si voluerit in mercato illo porcionem habebit, quod si forte taxator supervenienti porcionem contradixerit et coram decano testimonio duorum de gilda convinci poterit quod porcionem contradixerit duos solidos emendabit.

Advenienti tempore potacionis jus est ut decani capitulum suum submoneant ipso die adstari potacioni ibique precipiant ut hora nona ad sedem suam pacifice veniant, et quisque erga alium pacem habeat de veteri ac novo facto.

Statutum est autem si quis aliquem ad potandum secum adduxerit vel filium vel nepotem vel famulum de unoquoque xii. d. dabit; ab hac sententia magistros excludimus.

Si quis vero non habens gildam ad potacionem venerit et ibi latenter bibens deprehensus fuerit V^gr^ s. dabit, vel in momento gildam emat; inde clericos, milites et mercatores extraneos excipimus.

Si quis scacchas aut patinos in gildalla attulerit dimidiam unciam argenti dabit vel x. denarios.

[1] In 1127 the Count of Flanders granted St. Omer a charter which casually mentions the Gild:—'Omnes qui gildam eorum habent, et ad illam pertinent, et infra cingulam ville sue manent, liberos omnes a teloneo facio ad portum Dichesmude et Graveningis,' etc. (Giry, St. Omer, 372.) For the Hanse of St. Omer, see above, p. 198.

Si quis stulte contra decanos locutus fuerit, duas uncias argenti dabit.

Si quis contra alium stulte locutus fuerit duobus audientibus, dimidiam unciam dabit.

Si quis aliquem pugno vel pane vel lapide percusserit, non enim intersunt alia arma, duas uncias dabit.

Si quis a sede sua iracundia contra alium surrexerit, unam unciam dabit.

Si quis audito tintinnabulo clamorem fecerit vel se erexerit, dimidiam unciam dabit.

Si quis cyfum cum potu extra gildallam absque licencia portaverit, dimidiam unciam dabit.

Si quis ad capitulum suum prima pulsante non venerit, xii. d. dabit; qui vero absque licentia recederit non infirmitate cogente xii. denarios dabit.

De omni stulticia que agitur infra duos dies potacionis in facto vel verbis coram decanis respondendum est nec coram alio judice; sic enim definitum fuit tempore Gulurici Rabel castellani[1] ac divisum inter Guluricum et Burgenses.

Constitutum est ut decani vinum et ea que ad gildam necessaria sunt procurent quousque de acquisitis sua recipiant.

In potacione nostra custodes portarum portas levantes burgensibus ad potacionem vel ad capitulum existentibus quisque unum lotum, quisque propinatorum i. lotum singulis noctibus, quisque hostia custodientium unum lotum; si quis de gilda infirmatur et cognitus sit a vicinis suis singulis noctibus i. lotum. Si quis extra regionem fuerit, uxor ejus singulis noctibus i. lotum habebit. Si vero in nuptiis fuerit nulli de vino suo respondendum est. Sacerdotes vero omnes ad vesperas existentes quisque singulis noctibus unum lotum; ideo[2] omnes quorum diversorum parrochiani sumus. Custos sancti Audomari qui primam sonat per quam ad capitulum nostrum adunamur et nobis reliquias accommodat singulis noctibus unum lotum. Ideo quatuor plegii sumuntur ut si unus illorum vixerit integre persolvet unus [. . .] omnes plegii exstiterunt. Debitore vero mortuo omnes plegii liberi sunt.

Si quis gildam emerit juvenis vel senex priusquam in cartula ponatur ii. d. notario, decanis vero duos denarios.

Jus vero decanorum est ut duobus diebus ante primam cum notario su[o] comedant de communi in thalamo gildalle et vinum

[1] A D. 1072-1083. [2] ? id est.

tunc habeant, aliquod si fieri non potest aliquo occupati negotio, quisque decanorum ad hospitium suum per capitulum dimidium sextarium habeat; notarius autem unum lotum pro matutinali prelibacione. Singulis vero noctibus prout justum est ordinatis ac distributis quisque decanus ad hospitium suum unum sextarium habeat, notarius vero dimidium sextarium habeat. Si quis cum armis portas intrare voluerit, a custodibus arma detineantur quousque redeat vel quousque ab hospite suo aut ab alio sibi noto pacificus esse testetur. Finita potacione et persolutis expensis omnibus si quid remanserit communi detur utilitati vel ad plateas vel ad portas vel ad ville municionem, postea autem omnes posteros in XPO monemus ut pauperum ac leprosorum misereantur.—(*Mémoires de la Soc. des Antiquaires de la Morinie*, xvii. 5–10.)

Extracts from a Charter of Rouen. Circa 1150[1].

Item, nulla navis de tota Normannia debet eschippare ad Hiberniam nisi de Rothomago, excepta una sola cui licet eschippare de Caesarisburgo semel in anno.

Item, homines Rothomagi qui de ghilda sunt mercatorum sint quieti de omni consuetudine apud Londonium, nisi de vino et de crasso pisce.

Item, ipsi cives Rothomagi habeant apud Londonium portum de Dunegate, sicut habuerunt a tempore Edwardi regis, tali consuetudine quod, si in portu illo aliquam navim invenerint, undecumque sit, praecipient eam auferri inde, et exspectabunt unum fluctum et unam ebbam; et si navis inde ablata non fuerit, cives Rothomagi cordas navis illius rescindent, si voluerint, et eam sine clamore et forisfacto inde depellent, et, si navis periclitabitur ex illa depulsione, nemini inde respondebunt.—(*Chéruel, Hist. de Rouen*, i. 244, 245.)

The Gilds of Arras. Twelfth Century.

De caritatibus mercatorum et diversorum ministeriorum.—Verum sunt quedam in ecclesiis beneficia et consuetudines que proprie et specialiter caritatis nomen retinent, ut sunt ille que dicuntur ministerialium quibus de sua devotione obligant caritates, quia singulis debent annis sancto Vedasto de sua caritate et confraternitate, parmentarii quatuor solidos, sutores decem, qui utrique suum debitum

[1] Granted by Henry Plantagenet, Duke of Normandy.

solempniter ad altare sancti Vedasti deferunt. Porro guilda mercatorum debet viginti quatuor solidos, qui dicuntur de candela, quos scabini solvunt. Quando mercatores ad suam consident caritatem, si cellerarius vel thesaurarius illuc mittunt, uterque ex consuetudine debet habere dimidium vini sextarium, in caritate vero monetariorum thesaurarius dimidium vini sextarium.—Multe fuerunt hujusmodi caritates; sed quod in aliis refrixit in his viget.—(*Cartulaire de l'Abbaye de Saint-Vaast d'Arras*, 191.)

Charter of Dordrecht. Feb., 1201.

Ego Th[eodericus] Dei gratia Hollandie comes et A[leidis] Hollandie comitissa uxor mea tam presentibus quam futuris notum volumus fieri, quod oppidanos nostros de Durdreth in eorum jure tali decrevimus libertate in predicto oppido gaudere, videlicet quod nullis infra Durdreth liceat pannos ad venditionem incidere nisi illis qui ab hoc officio denominati sunt, eo quod pannorum incisores appellati sunt, et nisi in fraternitate et ansa sint oppidanorum ad Durdreth attinentium. Et ut hec pagina nostre institutionis rata et inconvulsa permaneat, eam sigillorum nostrorum appensionibus et testium subscriptionibus corroboravimus. Testes vero sunt hii: Boudinus de Haltena, Hugo de Vorne, Gerardus de Hurst, Gillis de Lecke, Siigerus Buth, Egidius de Wendelnesse, et scabini de Durdreth. Datum apud Durdreth per Willelmum not[arium] anno dominice incarnationis 1200, mense Februario.—(*Höhlbaum, Hans. Urkundenbuch*, i. 31.)

Charter of Calais. August, 1210.

Ego Reginaldus, comes Bolonie, et Ida, uxor mea, Bolonie comitissa, notum fieri volumus tam presentibus quam futuris quod nos scabinos de villa nostra de Kaleis et probos homines nostros de eadem villa et omnes infra banleucam de Kaleis habitantes, a communitate aliorum hominum nostrorum de terra de Merc separavimus, ita quod jura sua et libertates suas, sicut eas habebant ante quam a predicta communitate separati essent, possidebunt. Si autem scabini vel queremanni super se judicium habuerint quod dicere nesciant et diffinire, apud Merc de judicio illo suam facient inquisitionem; et si apud Merc super hoc docti esse non poterunt, judicium illud inquirent apud Breborc. Concessimus etiam predictis burgensibus quod quando assisiam suam facient, quod de omnibus

catallis que infra banleucam suam erunt que per aspectum (?) scabinorum debebunt assederi, assisiam suam faciant. Dedimus igitur et concessimus sepedictis burgensibus quod infra banleucam suam habeant gueldam mercatoriam, adeo libere et quiete ut illam habent illi de Merc. Actum apud Kaleis anno ab incarnatione Domini M°CC° decimo mense augusto.—(*Wauters, Lib. Com., Preuves*, 67, 68.)

The Hanse or Gild of Utrecht. Dec., 1251.

Nos scultetus, scabini, consules ac jurati civitatis Trajectensis pro communi utilitate statuimus, ne quis deinceps vendat vas vini vel amplius alicui qui illud velit vendere ad tappum in Trajecto, nisi emptor illius vini sit civis Trajectensis, solvens precarias [sive] exactiones, et ad alia onera civitatis sit astrictus. Statuimus etiam, ne aliquis nomine alicujus qui non est civis Trajectensis, vel ad opus ejusdem, vinum ad tappum vendere presumat. Si quis autem contra hacc statuta nostra venerit, ipse tenebitur solvere pro pena decem libras, vel civitatem exibit, non mercaturus per annum unum. Insuper reus erit erga nos juramenti nostri lesi. Insuper mercatores Reni, cives nostri, istud factum nostrum approbantes, inter se compromiserunt, quod, quicunque ex eis hoc statutum nostrum infregerit, hansa sua sit versus Renum privatus, et numquam eam recuperet, nisi pro pena solvat marcam, et nullus infra annum unum commercationem cum eo faciet. Quod si quis fecerit, ipse similiter erit hansa sua privatus, non recuperaturus eam, nisi marca data; et si ipse solus emerit vinum Colonie[1], hoc nullus fratrum hanse potabit Trajecti; et si quis potaverit et de hoc convictus fuerit per duos aldermannos, hansa sua carebit. Actum anno Domini 1251 in die Lucie virginis[2].—(*Forschungen zur Deutschen Gesch.*, ix. 524.)

Charter of the Gild of Goslar. May, 1252.

Willehelmus, Dei gracia Romanorum rex semper augustus, universis sacri imperii fidelibus, presentem paginam inspecturis graciam suam

[1] This seems to refer to a retail wine-dealer who buys the wine directly from Cologne, and not from or through a member of the Gild. (Forschungen, ix. 516.)

[2] These regulations were first made in 1233. The Hanse or Gild referred to in this document consisted of merchants of Utrecht who exercised the privilege of trading along the Rhine, i.e. 'hansa versus Renum.' (Ibid., 515, 516; Höhlbaum, Urkundenbuch, i. 86.)

et omne bonum. Cupientes ex affectu benigno et benignitate regia fidelium nostrorum providere comodis et quieti, notum facimus universis quod nos mercatoribus Goslariensibus dilectis fidelibus nostris conservabimus omnem libertatem et jura, que juste ab antiquis imperatoribus hactenus habuerunt, et volumus quod fraternitas ipsorum, que theutonice gelde vocatur, in ipsa civitate Goslarie in statu tali permaneat, videlicet, quod nullus sine consensu ipsorum pannos incidere presumat. Si vero aliquis contra id facere presumpserit, quocienscumque fecerit, in ultionem sue temeritatis duas marcas argenti componat, unam advocato civitatis solvendam, aliam ad muros civitatis resarciendos. Datum Goslarie, anno Domini 1252, sabbato post diem pasce.—(*Forschungen zur Deutschen Gesch.*, xi. 145 [1].)

Statutes of the Gild of Middelburg. June, 1271.

In nomine patris et filii et spiritus sancti, amen. Nos Florencius comes Hollandie concessimus hec instituta, que subscripta sunt, confraternitati mercatorum Middelburgensium in perpetuum duratura. Hec igitur, que jam dicti mercatores provida deliberatione et communi studio ad universorum qui in dicta confraternitate sunt utilitatem et honorem statuerunt, volumus rata et firma permanere statuentes, ut nulli quicquam de subscriptis institutionibus propria auctoritate [absque] communi consilio addere vel minuere sive eciam immutare licebit.

In hac ergo nullus earum artium, que mechanice dicuntur, esse conceditur officialis ut sunt fullo, sutor calciatorum, pellifex, tinctor, textor, faber, carpentarius, piscium carniumque venditor vel ille qui pisces sive carnes assat vel coquit venales; illi etiam qui caseum, butyrum, adipem vel unguentem aut sepum vel hiis similia venalia habent, ab hac fraternitate removentur; mercator etiam, qui vulgo mercenarius dicitur, sartor vel sutor vestium, conductivus braxator, qui in propria persona braxat vel proprio collo in domum suam vel ex ea aquam portavit, auriga, nauta, qui scuteman dicitur, venditor veterum vestium ex consuetudine, percussor lane, caldari-

[1] In 1290 King Rudolf restored to Goslar its old privileges including the Gild Merchant:—'honorabiles viri, mercatores videlicet civitatis Goslarie quandam fraternitatem habuerunt, que inninge seu gelde appellatur . . . nullus prefatos mercatores hactenus aliqua temeritate in juribus ipsorum et in incisione pannorum impedire presumat.' (Höhlbaum, Urkundenbuch, i. 259, iii. 414.)

orum compositor vel emendator simili modo a dicta fraternitate excluduntur. Quicunque eciam huic confraternitati adjungere se voluerit, nec spoelen nec sceren debet nec barbam alicujus pro precio ut barbitonsor conductivus radere. Nullus eciam mercatorum confraternitatis debet naves inferius quam ad instrumentum, quod scamnum mali dicitur, frangere nec eciam proprio collo ligna ad sepem bajulare; nullus quoque ex dictis fratribus debet ligna pro conductiva mercede incidere vel secare, insuper nec oves tondere nec lanam manutenus ad forum vendere nec pisces cujusquam generis per manum ad forum vendere poterunt. Molendinarius vero et illi qui poma vel pira vel alterius cujusquam generis fructus in foro vendunt, modo excluduntur supradicto. Sutoribus licebit tamen ad nundinas ea ferre et referre que ad officium suum spectant et eis competunt, nec tamen prius talia vendere poterunt quam ea suo officio fuerint adaptata et signata, ut si pelles emerint cujusquam generis, priusquam ab eis vendantur, cornua cum caudis dictis pellibus amputentur. Pellifices et venditores veterum vestium, emendatores caldariorum et carpentarii eadem licentia donantur.

Quicunque duas uncias Hollandie vel amplius valens de foro ad forum attulit ex parte orientali de Mase vel ex parte occidentali de Zwene comitate Flandrie excepta debet hansare.

Quicunque paterna successione liber confraternitatem istam acquirere voluerit in hoc oppido, sexaginta denarios usualis et legalis monete in Middelburg dabit comiti, hanse duos denarios.

Quicunque vloccatos pannos fieri fecerit et a tribus mercatoribus convictus fuerit, tres libras emendabit et ipse ad emendam pannos portabit. Nulli licet ut vinum . . . [lacuna in MS.] faciat venale, nisi fuerit confrater, et hoc sub positione predicta; hujus emende terciam partem confraternitati [dabit], aliam terciam formatores, ultimam terciam accusatores habebunt. Nulli licet pannos, qui vulgo ghewand dicuntur, incidere venales in halla de Middelburg, nisi ibidem confraternitatem mercatorum habuerit, [quod] qui infregerit, tres libras emendabit, que in antedictos usus similiter convertentur.

De omni autem emenda, que in confraternitate acciderit et que per formatores sive per comitem hanse ad satisfactionem in dicta fraternitate non poterit coherceri, debet ad pretorium de Middelburg requiri et dupliciter emendari; quidquid tunc de emenda ad confraternitatem [precipienda][1] super [extra manet], nos duas partes et oppidum terciam partem illius emende optinebit.

[1] MS. 'p'caute' or 'p'cante.' The correct reading seems to be 'precavente.'

Preterea decrevimus et volumus quidquid formatores per scabinos et juratos electi vel eligendi ad promocionem et utilitatem dicte confraternitatis ad falsitatem reprimendam sub suo juramento statuunt vel duxerint statuendum, ratum erit et firmitatem optinebit inconcussam, ac si in presenti scripto lucide exprimeretur, hoc salvo si per formatores, quos scabini et jurati predicti communi consilio ad hoc elegerint, aliquid in hiis presentibus litteris nostris ad promocionem dicte fraternitatis ordinata existant seu in posterum aliquid ab eis ordinentur in dicto negocio et ea nobis corrigenda videantur, dum factum suum et processum examinaverimus, illa omni dolo et fraude exclusis mutabimus et corrigemus bono modo.

In cujus rei testimonium presens scriptum sigillo nostro communiri fecimus et signari. Datum apud Thelinghe, anno Domino millesimo ducentesimo septuagesimo primo, feria secunda post octavas penthecostes[1].—(*Höhlbaum, Urkundenbuch*, i. 244, 245.)

Statutes of the Gild of Mechlin. August, 1276.

Nos Walterus Berthaut, dominus Machlinie, notum facimus universis presentes litteras inspecturis, quod nos ad petitionem burgensium nostrorum Machlinie tale jus eis dedimus in gulda Machlinie quam a nobis tenent, et super hoc decanos ipsius gulde judices constituimus, quod quicumque burgensis Machliniensis vellet facere communionem ad detrimentum dicte gulde, si sit confrater dicte gulde et convictus fuerit per simplicem assertionem duorum burgensium, jus perdet predicte gulde, et si se voluerit excusare, non potest nisi cum quatuor burgensibus, factis sacrosanctis. Si vero extraneus fuerit, jus perdet et sustentationem civitatis. Burgensis vero qui tali presumptori communicaverit, si confrater gulde fuerit, perdet eam et libram unam denariorum. Si vero confrater predicte gulde non fuerit, perdet libram tantum et sustentationem civitatis.

Dedimus etiam eidem gulde Machlinie talem libertatem in perpetuum quod infra dominium nostrum et terram nostram et subditorum nostrorum nulla gulda seu confraria a nobis aut successoribus nostris vel ab aliquibus possit de novo constitui aut elevari per quam dicta gulda Machlinie dampnum valeat incurrere vel gravamen.

Statuimus etiam si quis burgensis, non confrater dicte gulde, tamquam mercator ultra Mosam perrexerit, persolvat hansam, videlicet sex solidos et quatuor denarios Colonienses. Si vero fuerit

[1] The paragraphing is mine, not that of the MS.

de officio fullonum aut textor[um] aut ceteri fullonis officio, solvat dupliciter hansam antedictam. Et qui ultra Scaldam perrex[er]it tamquam mercator, solvet sex solidos et octo denarios sterlingorum, si non fuerit confrater sepedicte gulde. Si vero fuerit de officio textorum aut fullonum vel ceteri fullonis officio, solvet similiter in duplo dictam hansam.

Statuimus insuper quod custodes, qui dicuntur *wardiers* prefate gulde, custodiant ac precaveant, quod dicitur *warderen*, omnibus stantes ad pressorium Mechliniensem.

Volumus etiam firmiter precipientes judiciario nostro Mechliniensi quotiens a decanis prenominate gulde fuerit requisitus, quandocumque ipsi decani impotentes fuerint ad justiciam faciendam de presumptoribus dicte gulde, quod ipse justiciarius ex parte nostra concedat ipsis decanis potestatem judicandi de dictis presumptoribus et de omnibus que spectant ad guldam memoratam. De omnibus autem forefactis que inde provenient, excepta dicta hansa que specialiter spectat ad dictam guldam, nos desuper Walterus Berthaut et nostri successores habebimus medietatem et dicta gulda reliquam medietatem, supra Novam terram, et in Machlinia capiemus quartam partem, dominus episcopus Leodiensis quartam partem, dicta gulda quartam partem, et dicti decani quartam partem.

In cujus rei testimonium et ne quis posset in posterum a nobis aut a nostris successoribus super permissis oriri materia questionis, presentes litteras sigilli nostri munimine, una cum sigillis dilecti filii nostri primogeniti et gulde Machliniensis contulimus supradicte gulde sigillatas. Actum et datum anno Domini M.CC.LXX sexto, quinto kalendas septembris.—(*Wauters, Lib. Com., Preuves*, 234, 235.)

The Gild of Halberstadt. Jan., 1291.

Nos Vulradus Dei gratia Halberstadensis ecclesie episcopus tenore presentium recognoscimus et publice protestamur, litteras honorabilium civium Goslariensis civitatis, immo consulum et rectorum civitatis ejusdem recepisse, per quas discordia jamdudum habita inter burgenses nostre civitatis Halb' ex una et cives Quedeligburgenses ex altera [parte] est sopita, in quibus videlicet litteris expresse continebatur, quod nullus textor potest vel debet in aliqua civitate nullo etiam tempore, ubi non habet consortium mercatorum, quod vulgariter inninge appellatur, pannos incidere, nisi docere possit quod id ex antiqua consuetudine et sine contradictione fecerit. Unde cum in

nostra civitate consuetudo fuerit actenus observata et a nobis approbata, ut nullus textor carens consortio mercatorum possit incidere pannos in eadem, predictam consuetudinem in nostra civitate Halb' presentibus roboramus et volumus tam in nundinis quam extra in sepedicta nostra civitate inviolabiliter observari. In cujus rei testimonium sigillum nostrum duximus presentibus apponendum. Datum anno Domini MCCXCI, in die beatorum Fabiani et Sebastiani.—(*Urkundenbuch der Stadt Halberstadt*, i. 193.)

Charter of the Gild of Brackel. March, 1309.

Nos Burchardus miles dictus de Asseborg et Hermannus de Brakele famulus presentium serie literarum ad noticiam presentium quam futurorum cupimus pervenire, quod maturo consilio prehabito et ob petitiones mercatorum in Brakele jus inferius annotatum mercatorum societati, que vulgariter *hanse* dicitur, damus et dedimus in his scriptis,—scilicet ut quicunque de novo societatem eorum intrare voluerit, is dabit societati quindecim solidos denariorum in Brakele legalium, de quibus nobis sive dominis oppidi Brakele tres solidi cedunt tantum. Insuper dabit decanis dicte societatis sex denarios et talentum cere, et per hoc solutus est ratione ingressionis hujus societatis a qualibet pensione dominorum. Pueri autem horum qui in societati sunt, si prefatam societatem intrare voluerint, in antiquo jure ipsorum permanebunt. Ceterum cum dicti mercatores fuerint congregati, si in sedibus et congregatione ipsorum aliquis excessus inter ipsos ex furore vel iracundia, qui dicitur vulgariter *en uplop* aut *en hest mot*, ex casu evenerit, hunc excessum corrigere poterunt, ut per hoc in nostram jurisdictionem sive dominorum oppidi Brakele non excedant. Si eciam aliqui forenses aut de ipsorum societate dictos mercatores in eorum arbitriis et statutis niterentur impedire, hos corrigere possunt, absque gravamine nostre jurisdictionis, cum mulctis ab ipsis super hoc positis et statutis. Hec omnia et singula ratificamus pariter et probamus, dantes super eo presens scriptum perpetue valiturum, nostris sigillis roboratum. Actum et datum dominica, qua cantatur Oculi mei semper ad dominum, anno ejusdem MCCC. nono.—(*Gengler, Codex*, 267.)

The Gilds of Florence. A.D. 1378.

Perchè quando ne' tempi di Carlo I la città si divise in Arti, si dette capo e governo a ciascuna, e si provvide che i sudditi di

ciascuna Arte dai capi suoi nelle cose civili fussero giudicati. Queste Arti, come già dicemmo, furono nel principio dodici; dipoi col tempo tante se ne accrebbero, che elle aggiunsero a ventuna, e furono de tanta potenza, que le presero in pochi anni tutto il governo della città. E perchè tra quelle delle più e delle meno onorate si trovano, in maggiori e minori si divisero; e sette ne furono chiamate maggiori, e quattordici minori. Da questa divisione e dall' altre cagioni, che di sopra abbiamo narrate, nacque l' arroganza de' Capitani di Parte; perchè quelli cittadini, che erano anticamente stati Guelfi, sotto il governo de' quali sempre quel magistrato girava, i popolani delle maggiori Arti favorivano, e quelli delle minori coi loro difensori perseguitavano. Donde contra di loro tanti tumulti, quanti abbiamo narrati, nacquero . . . E di tutte le Arti che aveva ed ha più di questi sottoposti, era ed è quella della lana, la quale, per essere potentissima e la prima per autorità di tutte, coll' industria sua la maggior parte della plebe e popolo minuto pasceva e pasce.—(*Machiavelli, Delle Istorie Fiorentine*, lib. iii, anno 1378.)[1]

[1] The following were the seven Greater Gilds: judges and notaries; merchants or cloth-dealers ('Mercantanti o Arte di Calimala'); money-changers; wool-dealers; silk-dealers; physicians and apothecaries; and pelterers or furriers. The heads of these seven bodies are referred to in a document of 1193. The fourteen Minor Gilds existed at least as early as 1236. For the whole subject, see Peruzzi, Storia del Com. de Firenze, i. 58, 59, *et pass.*; Perrens, Florence, i. ch. iv; and the documents printed in Giudici, Istoria Munic., iv. App.

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Bound July 1959